



*A LETTER to the EARL OF LIVERPOOL from
the EARL OF SELKIRK ;—accompanied by
a Correspondence with the Colonial Depart-
ment (in the years 1817, 1818, and 1819),
on the Subject of the RED RIVER SETTLE-
MENT, in North America.*

A

LETTER

TO THE

EARL OF LIVERPOOL.

&c.

London, 19th March, 1819.

MY LORD,

I AM under the necessity of requesting your Lordship's attention to a subject, in which the maintenance of important private rights is not the only object of consideration, but in which the honour of the British Government is also deeply concerned. I trust, therefore, that notwithstanding the length into which I must unavoidably be led, I shall meet with a patient hearing. The question does not appear to me to involve any serious difficulty:—some length of detail is indeed necessary to explain a long continued ~~train of unjustifiable proceedings~~; but, when the facts are once understood, the practical conclusions to which they lead are plain and obvious. The subject properly belongs to the Colonial Department:—but the conduct of that Department, with respect to the matters in question, for more than three years past, while I was absent in America, has been such, that I can have little expectation of redress from that quarter; and I feel it necessary, therefore, to appeal

to your Lordship, as the head of His Majesty's Government.

The accompanying copy of a Correspondence, which has taken place during the last two years, between the Colonial Office and my brother-in-law, Mr. Halkett, will not only shew the necessity of a direct application to your Lordship, but will also point out the unexampled misconduct of the Law Officers of the Crown, and other public functionaries, in Canada; and the total perversion of justice which it has occasioned. Among these letters, I beg leave to call your attention most particularly, to that of 30th January last*. Before I proceed, however, to make any remarks upon the circumstances which are referred to in that Correspondence, it is necessary that I should take a short retrospect of some occurrences of an earlier date.

It will probably be in your Lordship's recollection, that, in the year 1812, I communicated to you my intention of forming a Settlement at Red River, upon a tract of land, of which I had recently obtained a conveyance from the Hudson's Bay Company. I explained to your Lordship my general views of the manner in which that country might be colonised, and of the national benefits which might be expected to arise from the proposed Settlement. The observations which your Lordship then made upon the subject, gave me no reason to suppose that my intentions were, in any degree, inconsistent with the views of policy entertained by His Majesty's Government.

* See page 106.

My intention of forming a Settlement at Red River, and the nature of my title to the land, was explained, ~~about the same time, to the Secretary of State for the Colonial Department, and to the President of the Board of Trade, neither of whom expressed any objection to the measure.~~ In the following year, when war had broken out with the United States; I applied to the Colonial Office to obtain from the Ordnance Department a supply of arms and ammunition, with a few light field-pieces, for the defence of the Settlement. The readiness with which this was granted, led me still further to feel confident that my undertaking was not disapproved of.

It will be unnecessary here to enter into any detail of the occurrences which have taken place at the Settlement. The circumstances of its first destruction, in the year 1815, by the North-West Company of Montreal,—its re-establishment in the latter end of the same year,—its second destruction in the following spring, with the massacre of Governor Semple and twenty of his people, by the same assailants,—~~were laid before the public in a printed Statement, of which copies were transmitted to your Lordship, and to Earl Bathurst, in the month of July 1817.~~ That Statement was compiled from affidavits and other documents sent home without any view to publication; and it was published at a time when my friends in England had no opportunity of consulting me on the subject. With the exception, however, of two or three trifling mistakes, wholly immaterial to the argument, I find the Statement to

be perfectly correct; and evidence is ready to be produced, as to every point upon which His Majesty's Government may wish for farther information.

Many of the facts, which are the subject of that Statement, had been previously communicated to the Colonial Department. An important Correspondence relating to them, began in the month of February 1815, by an application from the Governor and Directors of the Hudson's Bay Company,—as Guardians of the Peace within their Territories. That Correspondence continued for upwards of two years; and your Lordship, by calling for these documents from the Colonial Office, will be farther enabled to judge of the steps that were then taken to avert the evils which afterwards took place.

The application, to which I refer, was grounded upon information which I had received, that the North-West Company had organized a plan for destroying the Settlement; and, to avert this catastrophe, the protection of a military force was requested. On the 11th March, 1815, I received intimation from Lord Bathurst, that instructions had been sent to the Governor of Canada, to “give such protection to the settlers on Red River, as could be afforded without detriment to His Majesty's service in other quarters.”—If this instruction had been, in any shape, complied with, the sanguinary outrages which were afterwards committed, would never have occurred. The appearance even of the most trifling military succour sent by the Governor of Canada, would have prevented the meditated attacks of the North-West Company, as it would

have convinced their servants in the interior, that Government had resolved that the settlers should be protected. A serjeant's or a corporal's party would have been sufficient to create that impression; and, as the object might have been accomplished by so very small an exertion, it is not to be supposed that His Majesty's service could have received detriment from it in any other quarter. If the officer administering the government of Canada had entertained an idea that the measure would have been, in any respect, injurious to His Majesty's service, it may be presumed that he would at once have formed his determination on that ground. But it appears from his own official letters, that, previously to his decision, he consulted the principal agent of the North-West Company,—and the result left the settlers at the mercy of that agent, and of the Company which he represented.

When the general system and constitution of the North-West Company are well considered, the motives of their hostility to the Settlement on Red River will be evident. Their superiority of numerical force has hitherto enabled them to overpower all their opponents in the interior. By these means they have obtained, in a great extent of country, the exclusive possession of a trade, to which they have no exclusive right, and their whole object is to maintain this unauthorised monopoly. For this purpose, they keep a very numerous establishment of servants, among whom they select fit tools to be employed in any outrage, which may be necessary to promote their interest; and, by a system of lawless violence, they

not only deter other traders from entering into competition with them, but also hold the native Indians in a state of miserable subjection. The methods by which they have too long succeeded in effecting these purposes, I have explained in a small pamphlet, entitled, "A Sketch of the Fur Trade in British North America;" and I may refer with the more confidence to that publication, as it has now been two years before the public, without the slightest attempt having been made to contradict the facts, or to refute the arguments, contained in it.

The North-West Company do not pretend to deny, that, from the first, they looked upon the colonization of Red River as peculiarly objectionable; and they attempt to justify their objections on the ground of its being prejudicial to the Fur Trade.—The Settlement, however, is situated in a district which has long since been exhausted of valuable furs. The traders obtain no articles of any importance from that part of the country, except provisions; and of these, a better, cheaper, and more regular supply might certainly be procured from agricultural settlers, than from the Indian hunters. At all events, the persons engaged in the Fur Trade can be entitled to nothing more from Government than protection in their lawful rights; but a great deal more has been bestowed upon them, under some vague idea, as it would appear, of the national importance of their trade, and of the necessity of supporting the interests of Canada.

Upon inquiry, however, it will be found, that the Fur Trade of Canada, is, comparatively speaking, of

little importance, either to that province, or to the mother country.—The inhabitants of Canada themselves, with the exception of a few persons connected with the North-West Company, look upon the Fur Trade as prejudicial, rather than as contributing to the prosperity of the province. The North-West Company, indeed, would insinuate, that their own interests are identified with those of the colony at large; but the Canadians are of a very different opinion. In fact, that Company enjoys no influence whatever with the great body of the inhabitants, either of English or of French extraction: nor does it appear that their boasted influence over the Indians has ever been of the slightest use either to His Majesty's Government, or to the colony itself. Among the numerous native tribes who joined the British standard during the late arduous struggle with the United States, there was not to be found one Indian from the whole extent of country in which the North-West Company carry on their trade.

It is not surprising that the Company's agents in England should exaggerate the magnitude of their mercantile transactions, and endeavour to impress the public with high notions of the extent, and national importance, of their trade. They talk of their numerous commercial stations in the interior, and their chain of forts, extending throughout the northern parts of the American continent, from the Gulph of St. Lawrence on the east, to the Pacific on the West, and the Frozen Ocean on the north.—These stations, however, are thinly scattered over an immense extent of country, often at a distance of

hundreds of miles from one another ; and what they call a fort, is, in general, nothing more than a miserable log-house, not superior to an ordinary Irish cabin,—sometimes, but not always, surrounded by stockades—and occupied by, perhaps, five or six half-savage Canadian voyageurs. When the servants of the Company, indeed, are collected from all these hovels, and united for the commission of any act of violence or criminal aggression, they form, unfortunately, a banditti of no small force : but, from the printed memorials of the North-West Company, and other publications of their agents, one would be led to suppose that nothing could exceed the magnificence of their establishments, or the national importance of their commerce, whether viewed with reference to the returns which it brings to the mother country—to the encouragement it gives to the manufacturer in England—or to the employment which it affords to the labouring classes in Canada.

The whole of this boasted trade, however, gives employment only to one vessel of 350 tons burden, in one yearly voyage to and from the St. Lawrence ; and the average amount of import duties annually paid by the Company, does not equal those paid upon a single cargo of an ordinary West Indiaman.

With respect to their exports, the representations of their agents are equally delusive. There are many private commercial houses at Montreal and Quebec, engaged in the ordinary trade of the colony, which export singly from this country a greater value of goods, than are exported by the North-West Company, with all their fifty partners collectively.

In fact, a few well-established parishes or townships in Canada, covering a space of thirty or forty miles square, consume more British manufactures, than all the Indian territories put together.—What then are we to think of those who would sacrifice colonization to the Fur Trade!

As to the merit also which the North-West Company claim for the employment afforded by them to the labouring classes in Canada, it ought to be first ascertained, whether the habits which these people contract in their service, are not ruinous to their moral character, and utterly inconsistent with any disposition to regular industry. So far indeed from benefitting the poorer classes of Canada, it will be found that a part of the system regularly adopted by the North-West Company, in the interior, is to keep their Canadian servants in a deplorable state of poverty, debt, and dependence, so as to make them ready to commit crimes of every description, at the order of their employers.

This system has been gradually matured during a long period of years, and is now so completely organised, that the North-West Company might well calculate on the permanent maintenance of their lawless power. But when the Settlement on Red River was undertaken, the leaders of the Company foresaw that an agricultural colony, however inconsiderable at its commencement, would, if once firmly established, naturally increase in population, and could not be overawed like the feeble and scattered stations of rival traders,—that the progress of a fixed population would be accompanied by municipal institutions for

the administration of law, and the maintenance of a regular police,—and that every step towards civilized order would have a tendency to overturn that system, by which they were enabled to direct the combined force of their servants to illegal purposes. It was natural, therefore, that the North-West Company should look upon colonization as undermining the very foundation of their monopoly.

It may be established by indisputable evidence, that the determination of the North-West Company to frustrate, at any expense, my attempt to form a settlement in the interior, was taken before the arrival of the first colonists in that country,—long before the date of those occurrences, which they now pretend to have been the original cause of all the disturbances, and even before any of those alleged acts of mutual aggression, which have been so much dwelt upon, could possibly have occurred. Attempts have been made to excuse, on the ground of retaliation, not merely the robberies, but the murders, committed by the North-West Company, as being the errors and indiscretions of inconsiderate young men, acting under the impulse of irritation. Such men may, in many cases, have been put forward as the ostensible actors; but these crimes have been deliberately planned, directed, and sanctioned by Partners of the Company, some of whom acted at the time as magistrates for the Indian territory.—Is the plea of retaliation to be admitted as a vindication for the conduct of men who thus take upon themselves systematically to avenge wrongs, for which the laws of their country would have afforded means of redress? With the

North-West Company, this is an avowed general principle of conduct ; and it cannot be necessary to point out the consequences that must follow, when a powerful body of men are allowed to judge of the validity of their own complaints, to determine for themselves the measure of satisfaction to be taken for any injury, real or supposed, and to give the name of retaliation to any crime, which it may be for their interest to perpetrate.

While the North-West Company thus avow principles of conduct, the obvious consequence of which is to establish the law of the strongest as the only rule of right, those who are described as their antagonists, have been exerting their utmost endeavours to introduce civilized order into the interior of British North America. When, by the formation of the Settlement on Red River, the colonization of their territories had been commenced, the Directors of the Hudson's Bay Company turned their attention to the establishment of a more regular and effectual administration of justice. By their Charter, the powers of jurisdiction are vested in the Governors and Councils of their chief establishments, in conformity with the system adopted in the formation of other English colonies under Proprietary Governments,—the only system indeed which can well be adopted, when the mother country is not to bear the expense of a colonial establishment. — Several of the most eminent lawyers in England were consulted upon the extent of the Company's rights of property, and jurisdiction, and their unanimous opinion was communicated to the Colonial Department in the months of

May and June, 1815: at the same time a copy was transmitted of certain proposed Ordinances for the better administration of justice, which had been drawn up by counsel, and adopted at a General Court of Proprietors, under a clause of the Charter, by which the Company are authorised to make laws and ordinances for the good government of their colonies and plantations. The Directors requested, that the ordinances which were thus proposed should be submitted to the consideration of His Majesty's Attorney and Solicitor-General, for their opinion. The result, however, has never been communicated to the Company; and this is the more extraordinary, as it appears, from a letter published by the agents of the North-West Company, that they had expressed to the Colonial Department, at that time, their determination to resist any exercise of jurisdiction on the part of the Hudson's Bay Company.

The Directors again applied to the Colonial Department on this subject, in the month of January 1816, a communication having previously been made by them with respect to the outrages committed at the destruction of the Settlement in the preceeding summer; and they renewed their request to obtain, as early as possible, the opinion of the Law Officers of the Crown, relative to the jurisdiction granted by the Charter, as the promulgation of that opinion would probably have great effect in checking violence and outrage for the future.—No notice was taken of this application till three months afterwards, when the Directors were informed (on the 12th of April, 1816) that Lord Bathurst, as a preliminary measure,

and with a view to ascertain the extent of jurisdiction which the Hudson's Bay Company could legally claim, had referred the case to the consideration of His Majesty's Law Servants, and that, as soon as their Report should be received, a communication of his Lordship's views on the subject should be made to the Directors.

After another interval of nine months, the Directors, on the 8th January, 1817, again submitted to Lord Bathurst, that in consequence of the second destruction of the Settlement, with the massacre of Governor Semple and his people in the preceding summer, it had become more necessary than ever, to obtain the promised communication, in order that effectual means might be adopted to protect the lives and property of persons resident within the Company's territory.—To this an answer was received (January 16th), stating, that “ transactions
“ have occurred in Upper Canada, and in the Indian
“ territory, which have given a very different com-
“ plexion to the disputes which have, for some time
“ past, prevailed between the Hudson's Bay, and
“ North-West Companies,—and that the question is
“ no longer how to settle the conflicting claims of
“ two mercantile companies, but how to bring to
“ condign punishment, the perpetrators of those
“ outrages of every description, which have, during
“ the course of the present year, been committed,
“ and which each has been desirous of imputing to
“ the other.—As the result of the trials, which must
“ now take place, will shew to which party guilt is
“ really imputable, and as the question of jurisdic-

“ tion will, in all probability, come under the cogni-
 “ zance of the Courts, before whom the trials take
 “ place, (it being the only justification of some of
 “ the late acts committed,) Lord Bathurst does not
 “ think it necessary or proper to express at present
 “ any opinion upon the subject.”

The communication of Lord Bathurst's views, and of the opinions of the Law Officers of the Crown, had been requested, expressly with a view to the adoption of measures for the security of the settlers; and it seems a very extraordinary determination, that such measures should be entirely deferred, because trials were expected to take place relative to crimes and outrages already committed; and that no precaution was to be taken to prevent future outrages, till after it had been ascertained who were really guilty of the past. Nor was it less extraordinary, that because, in the course of these trials, a question might incidentally arise as to the rights of jurisdiction vested in the Hudson's Bay Company's Officers, no means were to be adopted to ascertain, from adequate authority, the extent of these rights; and that, instead of directing, at once, an investigation to take place, under the authority of some high and competent tribunal in England, His Majesty's Government were to wait for the decision of a Colonial Court, in order to form their opinion upon that important subject.

Although it is now two years since this answer was received from the Colonial Department, and nearly four since the Hudson's Bay Company applied to have their chartered rights, and the measures

which they proposed to adopt for the better administration of justice, submitted to the consideration of the Law Officers of the Crown, no step has yet been taken on the subject; at least, if the Attorney and Solicitor-General have given an opinion, it has been withheld from those who are best entitled to know it,—from the Company, who, under a Royal Charter, are entrusted with the rights and duties of guardians of the peace. The effect of this, in the actual circumstances of the country, has been, to suspend altogether the exercise of the jurisdiction granted by the Charter, and to deprive the inhabitants of the Company's territory of the benefit of any administration of justice whatever. In the mean time, the North-West Company maintain their claims by force; and, under the never-failing pretext of retaliation, commit every species of outrage.

It appears, that the Colonial Department has been impressed with the notion, that all the violences committed at Red River, and in other parts of the interior, have arisen from contentions of commercial interest, and mutual aggression between the contending parties.—Of these two parties, however, the one outnumbers the other in the proportion of nearly three to one; and it would be extravagant to suppose, that a system of aggression would be adopted by the weaker party. Neither can it be supposed that men who entertained plans of lawless aggression, would have made anxious and repeated applications to His Majesty's Government for military protection. On the other hand, the objections made to that measure by the North-West Company, ought

to have excited suspicion, when those who were known to possess a great superiority of force, thus appeared to dread the presence of the King's troops.

The rejection of this request for military protection has been followed by scenes of outrage and bloodshed; but while upwards of forty lives have been lost, within the space of twelve months, on the side of those who had called for protection, one individual only has fallen on the other,—and that one engaged, at the time, in a premeditated attack upon the Settlement.

The instructions given, in March 1815, by Lord Bathurst to afford protection to the settlers at Red River, having proved unavailing, the application was renewed by the Hudson's Bay Company in the ensuing month of December. Intelligence had by that time been received, of the destruction of the Settlement, which fully verified the apprehensions upon which the former application had been grounded. This information was transmitted to the Colonial Office; and, at the same time, a communication was made of numerous affidavits and other documents, sufficient to convince any one that this destruction had been the work of the North-West Company. The re-establishment of the Settlement, which had taken place in the same Autumn, being also communicated, the probability of new aggressions was particularly pressed upon the attention of the Colonial Department. The request for military protection, however, was refused, on the ground of its being impracticable to carry it into effect. In reply to this it was pointed out, that great numbers of men in the service of the

North-West Company pass annually along the proposed route, conveying large quantities of bulky goods to the distance of many hundred miles beyond Red River,—that there could be no difficulty, therefore, in finding means of conveyance for a small detachment of the King's troops. These remonstrances, however, were of no avail in opposition to the statements which had been transmitted by the officer then administering the government of Lower Canada. His opinion had, undoubtedly, been formed upon representations made to him by the North-West Company; and the circumstance affords a curious illustration of the credit that is due to information from that quarter.—In the year 1815, when the object in view was to protect the lives of the settlers at Red River, it was stated to be impracticable to send troops from Canada for that purpose. Two years afterwards, when the object was to promote the interests of the North-West Company, not only were troops actually sent to Red River, but it was found that they had ample time to return in the same season to their quarters in Canada.

As the Colonial Department, however, could not be persuaded of the practicability of sending troops from Canada, it was suggested that a small number might, at all events, be sent from England, by way of Hudson's Bay: but this application met with no better success.—All aid from His Majesty's Government being thus refused, it was next proposed, by the Directors of the Hudson's Bay Company, that under a clause of the Charter, which authorises the Company to provide an armed force for the defence of

their establishments, they should enrol and arm as many of their servants, and other persons settled within their territories, as circumstances might call for; and also grant commissions to trust-worthy persons for the purpose of disciplining and commanding them. This intention being communicated to Lord Bathurst, he expressed his decided objection to the measure, and warned the Company against incurring the responsibility of persisting in it. Thus, while the protection of the public force was withheld, the settlers were prohibited from taking any effectual measures for their own defence.—It cannot be alleged that these measures were prematurely, or unnecessarily, proposed. Two months had scarcely elapsed after this prohibition had been uttered, when Governor Semple and his people were massacred, and the settlers again driven from their lands by a ruthless banditti, in the pay of the North-West Company.

In the course of these communications, the Directors of the Hudson's Bay Company suggested that it might be the means of preventing, in a great measure, the apprehended renewal of attacks upon the Settlement, if His Majesty's Government would express through the Governor of Canada, their high displeasure at the unwarrantable conduct of those who had been concerned in the outrages committed the preceding summer. Even this could not be obtained; and it was stated, in reply (December 29, 1815), that "until Lord Bathurst shall be in possession of some more decisive evidence, as to the persons really guilty of the disturbances in that quarter, and until the charges brought against the

" Governor and Sheriff of that Settlement, for vio-
 " lent conduct towards others of His Majesty's sub-
 " jects trading in North America, shall have been
 " duly investigated before a competent tribunal, his
 " Lordship must defer giving an instruction, the
 " evident tendency of which would be, to prejudge
 " the whole question at issue."—Among the docu-
 ments which had been transmitted to the Colonial
 Office, were letters of a partner of the North-West
 Company; in which he pretended to act by authority
 of His Majesty's Government, in the measures adopted
 for the subversion of the Settlement, and particularly
 in carrying off some field-pieces, which constituted
 the principal means of its defence: and it was proved
 by numerous Affidavits, that these guns had been
 afterwards employed by the same partner and his
 associates, in hostile attacks against the settlers. As
 Lord Bathurst, however, did not consider this as
 sufficiently decisive, farther evidence was transmitted,
 particularly an extract of a letter from one of these
 partners, in which he tells a friend, that he is on his
 way—" to commence open hostilities against the
 " enemy in Red River;" and that his object is,
 " the complete downfall of the colony by fair means
 " or foul."—A communication was, at the same
 time, offered of still more evidence; but this letter
 the Colonial Office did not even deign to acknow-
 ledge.

" During the period of these communications, the
 North-West Company were possessed of a decided
 superiority of force in the interior. So long as this
 continued, no exertion of public authority could be

obtained to check them in the lawless employment of that force; and every measure which was successively proposed for the security of the settlers, or for the enforcement of public justice, was rejected. In the year 1816, however, when, as a magistrate, I had arrested several of the partners of the North-West Company at Fort William, in consequence of criminal charges advanced against them,—(upon which charges bills of indictment have been since found against all these individuals,)—an impression was created, that they were no longer placed above legal responsibility. Their ignorant Canadian servants in the interior, as well as the native Indians, had long been impressed with the idea that the Company were subject to no control; and the partners, conceiving that their own unassisted exertions would not be sufficient to re-establish that impression, the aid of Government was applied for. The success of their application soon became visible. The scrupulous caution which the Colonial Department had observed when their interference was anxiously, and repeatedly, requested for the protection of the lives of the settlers at Red River, seems at once to have disappeared. Placing implicit reliance upon the *ex parte* representations which were made to them, they forgot entirely their determination not to prejudge the question; and prepared the Royal Proclamation, (issued at Quebec, in May 1817,) in which the whole question is at once hastily, and unfairly, prejudged.

In that Proclamation it is asserted, in the most unqualified manner, "that the breaches of the

“peace, and acts of force and violence” (recently committed in the interior of British North America,) “have arisen from contentions between certain merchants carrying on trade and commerce, under the names of the Hudson’s Bay Company, and North-West Company respectively, and other persons, their servants, agents, and adherents.”—The commercial servants of the Hudson’s Bay Company are here confounded with the agricultural settlers at Red River,—a distinct class of persons, having different interests, occupations, and pursuits:—and blame is insinuated against both, without proof having been adduced against either. There seems, indeed, to be a studied ambiguity as to the persons who are meant by “agents and adherents,” and also as to the acts of force and violence which are alluded to. But while the Proclamation thus appears to declare all parties to be equally in the wrong, especial care has been taken, that the only party which had been really aggrieved should suffer additional injuries by its operation.

The observations in the accompanying Correspondence, are chiefly directed to the injustice which has been heaped on me as an individual. But the facts which are therein stated cannot fail, I think, to convince your Lordship, that the unconstitutional interference of the Executive Government with the administration of justice, which has taken place in Canada, under Lord Bathurst’s instructions, must produce the most pernicious effects in that Colony. An impression has evidently gone forth, that, in these

matters, it has been the decided wish of His Majesty's Government, without waiting for the result of a fair judicial investigation, to favour one party, and to crush another. Upon this impression, the Law Officers of the Crown, in both provinces, have unquestionably acted with respect to myself, and to those with whom I was connected. But if the forms of judicial procedure are to be converted, at the pleasure of the Executive Government, into an engine of oppression, can it be supposed that His Majesty's subjects in Canada are so blind as not to perceive, that the same train of persecution which is directed against one individual, may be directed against any other? This is a matter of serious consideration, with reference to the peculiar situation of the Canadas, where the confidence and attachment of the inhabitants are so indispensably necessary for the defence of the Colony. These transactions have already excited no slight degree of general indignation and disgust, among those who are wholly unconnected with the parties more immediately concerned; and your Lordship will find, upon adequate inquiry, that many of those, who, during the late war, manifested the most devoted attachment to the Mother Country, now remark, with deep mortification, that such proceedings would not have taken place under the Government of the United States.

The appointment of Commissioners of Special Inquiry, which had been made by the Governor in Chief, and which was confirmed by the Proclama-

tion, has been in like manner perverted to serve the interests of a party. The high authority with which these Commissioners were invested, has been employed by them to impede, and not to promote, the purposes of justice; and the views of his Majesty's Government, to obtain correct information as to the occurrences which had taken place in the interior, have been entirely defeated.—Your Lordship will not be disposed to place much reliance on the Reports of that Commission, when you are apprised that one of the Commissioners (Mr. Fletcher) was suspended from the functions of his office, by the late Governor-in-Chief; and that the misconduct of the other, (Mr. Coltman,) in his capacity as magistrate, has been such as to give occasion for a presentment by the Grand Jury of Montreal, upon which it is now the duty of the Law Officers of the Crown to institute a criminal prosecution against him.

From the first moment, indeed, of their appointment, these Commissioners departed from that line of conduct, which a proper regard for the objects of their mission, ought to have pointed out. When we consider the contradictory assertions which had been made to the Provincial Government, as to the occurrences in the interior, it was evidently the duty of the Commissioners to call upon both parties for a distinct statement of their respective allegations, and the evidence in support of them. They were fully aware, that my agents at Montreal were possessed of much important evidence on the subject; but, in passing through that place, on their route towards Upper Canada and the interior, they neither

applied to them for information, nor took any examination of the witnesses who were ready to be produced. While at Montreal, they remained in constant intercourse with the North-West Company—and with them only—and set out for Upper Canada, in one of that Company's canoes, under the guidance of one of their agents. They remained at York, and at Nottwasaga on Lake Huron, for several weeks, living with the partners and agents of that Company, and surrounded by their clerks and dependents, who were brought forward to make affidavits. While they were thus occupied, Mr. Pritchard passed through York, on his way from Fort William to Montreal, and was called upon to give information to them, respecting the state of the ice on Lake Huron. It was well known that this gentleman had escaped from the massacre of the 19th of June, at Red River, and had been an eye-witness to the most remarkable of those occurrences, which it was the primary duty of the Commissioners to investigate. He had also been at Fort William during those transactions, of which the North-West Company complained, and about which they had been producing testimony; but not a single question was put to him, respecting the facts which he had witnessed, either at Fort William, or at Red River.

The Commissioners, having found it impracticable to proceed, on account of the ice, returned to Lower Canada: and Mr. Fletcher remained for some time at Montreal, to receive the affidavits of such witnesses as my agents had to produce. During

the stay of the Commissioners at York, charges had been advanced against me by the North-West Company, upon testimony of the most suspicious character, and which might have been refuted by satisfactory evidence; but my agents at Montreal had received no intimation whatever of the nature of these charges, nor were they aware that any explanation of my conduct was requisite; and Mr. Fletcher carefully abstained from putting any questions to the witness on that subject.

In the ensuing spring, the Commissioners again proceeded to Upper Canada, on their way to the interior; and Mr. Coltman, leaving his colleague behind at the outlet of Lake Superior, went on by Fort William and Lake La Pluie. At both of these places the North-West Company had been recently guilty of outrages, in open contempt of the Proclamation; but of these Mr. Coltman took no notice, and, though particular complaints were made to him at the latter place, he gave no redress. At another station, on the River Winnipeg, he found Archibald Norman McLeod, Alexander McDonell, and John Duncan Campbell, three partners of the North-West Company, who had been among the most active leaders and instigators of the crimes committed during the preceding year, and against whom indictments have since been found for murder and other atrocious offences. Mr. Coltman was in possession of information on oath as to the conduct of these men, on which it was his duty as a magistrate to arrest them; but, after paying them a visit, he proceeded on his voyage, without even taking

a recognizance for their appearance, to answer the charges against them.

On his arrival at Red River, Mr. Coltman immediately proceeded to visit Mr. Shaw, another of the partners, whose tent was pitched in the midst of an encampment of servants of the North-West Company, consisting of those half-breeds, who had committed the massacre of Governor Semple and his people in the preceding summer. The next day, he visited the Settlement, when the crimes of these men were pointed out to him; and a witness was introduced, who could have given evidence of the greatest importance. This person had drawn up a distinct narrative of the facts which he had witnessed, and was ready to attest it on oath; but Mr. Coltman, on the most frivolous pretexts, put off receiving that important testimony. Independently, however, of any new information which Mr. Coltman might have obtained, he had then in his possession warrants issued (under the Canada Jurisdiction Act) by the Chief Justice of Montreal, upon an indictment against the murderers of Owen Keveney. Some of these men, for whose apprehension a reward had been offered by Proclamation of the Governor of Canada, were in the encampment along with Mr. Shaw. Offers were made, by gentlemen of unexceptionable character, to execute any warrant which might be entrusted to them; but Mr. Coltman neither accepted these offers, nor took any other measures for effecting the arrests. One of the warrants was against the notorious Cuthbert Grant, who had not only been accessory to the

murder of Keveney, but had also been the leader of the North-West Company's servants, on the 19th of June, when the massacre was perpetrated; and no less than thirteen bills of indictment have been found against him at Montreal, Quebec, and York, for capital offences—all of which still remain untried. After omitting to arrest this man, when he had it in his power, Mr. Coltman, on the eve of his departure from Red River, accepted his voluntary surrender, and took him down to Canada,—more as a travelling companion than a prisoner,—admitting this murderer and incendiary to dine at his own table, and to sleep in his tent, during the whole voyage.

Mr. Coltman had it in his power to have arrested almost any of the half-breeds who had been engaged in the murders of the 19th of June; but, after declining the services of those who offered to secure their persons, he invited these men to come before him to give their voluntary declarations; promising them, that, while this was going on, no proceedings should be instituted, nor any warrant issued against them. While they were thus making their declarations, they were in constant intercourse with Mr. Shaw, who had ample opportunities of instructing them as to the testimony they were to give; and his directions could scarcely fail to be attended to, as his own half-breed son was one of their leaders. They were allowed to tell their story to the Commissioner, and then to depart, unmolested, into the plains, where there was no prospect of over-

taking them ; and, after this, Mr. Coltman declared, that he was ready to receive evidence against them.

In the peculiar circumstances in which Mr. Coltman had come to the interior, it was evidently among the first duties of his commission to secure the persons of those who had been the most active in the atrocities which had taken place, and to use every endeavour to collect the evidence necessary for their conviction. It was not, however, without marked reluctance that Mr. Coltman could be induced to enter into any investigation of the charges against the North-West Company, and his whole conduct was calculated to repress, rather than to encourage, the communication of farther information on the subject. At length, after many delays, he consented to receive, and attest, the evidence which had been collected on my behalf at Red River, and in other parts of the interior. But in the affidavits, which he drew up, as containing the whole substance of the testimonies given before him, several instances occurred, where the facts, which the witnesses had stated on oath, were deliberately and purposely omitted. The facts so omitted were always such as went directly to inculcate the leading partners and agents of the North-West Company—the personal friends of Mr. Coltman.

After a great many witnesses had been successively examined by Mr. Coltman, a general statement was made out, and presented to him (by my Law Agent), pointing out the different charges which had been substantiated before him on oath ; and war-

warrants were accordingly demanded against about sixty partners, clerks, and servants of the North-West Company, who were charged with murder, and other capital offences, upon the same evidence on which bills of indictment have since been found against them. Mr. Coltman declined to grant these warrants, saying that, on general grounds, he had determined not to put into the hands of one party, warrants against the other; and he excused himself from taking any other measures for the arrest of the parties accused, on the plea of his want of means for effecting their apprehension, or conveying them to Canada. He had only one canoe with him; but if he had been disposed to act in a vigorous and effectual manner, he might have had the whole strength of the country at his disposal. No one would have ventured to refuse any accommodation, or supplies, which might have been required; nor have hesitated to obey the orders of the Commissioner, when called upon in the King's name, to proceed to Canada to give testimony, or to assist in the conveyance of a prisoner. If no such assistance was to be demanded, and if Mr. Coltman, coming to the interior with one canoe only, was not authorised and determined to use the means which the country afforded for carrying the law into effect, it was idle for him to come in the character of Magistrate. If, at the same time, it was assumed that every man in the country must belong to one party or the other, and laid down as a principle that warrants were to be entrusted to impartial men only,—in what

manner did Mr. Coltman intend that the law should ever be executed?

Although Mr. Coltman had obtained a great mass of evidence respecting crimes committed by partners, clerks, and servants of the North-West Company,—had taken recognizances from several of these persons for their appearance at Montreal, to answer the charges against them,—and had bound others to appear as witnesses,—yet, in the month of May last, six months after his return from the interior, he had communicated no affidavits, or evidence of any kind, to the Law Officers of the Crown, except on the single case of the murder of Kevaney. The motive for this extraordinary conduct, so inconsistent with his duty as a Magistrate, may be explained from its bearing on another proceeding no less extraordinary;—*viz.* a proposal which he made to me, through an indirect channel, to drop these prosecutions, suggesting that I could never afterwards have so favourable an opportunity of making an advantageous adjustment of my differences with the North-West Company. This proposal, which appeared to me little short of an offer for compounding felony, was made immediately before the opening of the Commission of Oyer and Terminer at Montreal, in which a great number of bills of indictment were found against partners of the North-West Company. There can be no doubt that they would have agreed to make very great sacrifices, in order to avoid disclosures; and Mr. Coltman was fully aware of the evidence which was likely to come before the Court.

The witnesses, who were then at Montreal, ready to go before the Grand Jury, were, for the most part, the same whom he had examined at Red River; and, not only with a view to the reputation of the North-West Company, but also for his own credit, he might well be desirous that this evidence should not be produced, so as to expose the neglect of duty, in omitting to take any steps for the apprehension of men, against whom he had received such decisive testimony.

While Mr. Coltman thus wilfully neglected the primary object of his commission, and instead of exerting himself to bring Criminals to justice, employed all his influence to excuse and to screen them, he lost no opportunity, during his stay in the interior, to promote the interests of the North-West Company, and to confirm the idea of their unbounded influence with His Majesty's Government. The chief object of his solicitude, which he professed to consider as of the greatest consequence for the restoration of immediate tranquillity, was to carry into effect the injunctions of the Proclamation for the mutual restitution of the property, described in that document as having been seized and forcibly taken, in the course of the disputes between the two Companies. It was notorious that the North-West Company had taken forcible possession of property to a very great amount: Mr. Coltman contented himself with exacting promises from their agents, that this property should be restored; and,—as might have been expected,—these promises still remain unperformed. When, however, his assistance was called for by the

North-West Company, Mr. Coltman did not confine himself to the exacting of promises. With great parade, and under his own immediate inspection, he enforced the restitution of some articles to which they had a very doubtful claim. Their intrinsic value was a matter of little consideration, but the example was of incalculable importance, in demonstrating to every one in the interior, the impracticability of obtaining redress for injuries done by the North-West Company, and repressing all idea of resistance to their lawless sway.

In carrying these restitutions into effect, Mr. Coltman professed to adhere rigorously to the letter of the Proclamation; but, in opposition to every principle of justice, and even to any fair interpretation of the Proclamation itself, he refused to allow any compensation for articles which the North-West Company had carried away or destroyed. Some breeding and draught cattle had been obtained from the clerk in charge of their post at Lake la Pluie, upon an agreement of sale, and brought to Red River to supply the loss of those which had been destroyed in the various attacks on the Settlement. The agents of the Company disputed the validity of this sale. Proof was then offered that other cattle of the same description, and to a much greater amount, belonging to me, had been forcibly taken and killed for the use of the agents and partners of the North-West Company; but Mr. Coltman declared, that any statement of this kind was foreign to the question, and that the cattle which had belonged to the North-West Company must be restored. After the repeated

devastations which had been committed, three milch cows only remained at Red River; two of these Mr. Coltman decided to be the property of the North-West Company; and on the day after this decision, one of the two was killed by order of the agents. One cow and a bull still remained at the Settlement: and, in the course of the ensuing winter, the latter was shot at by a partner of the North-West Company, and so severely wounded, that its life was with great difficulty preserved.—In the same spirit Mr. Coltman gave his countenance to the wanton destruction of a field of grain, although well aware of the danger of scarcity to which the settlers were then exposed. He knew that their crops had been laid waste the preceding season, after the massacre on the 19th of June, by the servants of the North-West Company: yet, when he allowed the agents of that Company to take possession of the field, (to which they had no legal title,) he turned a deaf ear to all remonstrances against the destruction of the growing crop, and coolly witnessed the conduct of these men, who, while the adjacent plains offered a superabundance of excellent pasture, turned in their horses to graze upon the green corn.—Such were the proceedings which Mr. Coltman professed to consider as necessary for carrying into effect the views of His Majesty's Government, and as being of more importance for the restoration of tranquillity, than the punishment of a banditti, who had been employed to commit a long series of atrocious crimes.

I must here be allowed to call your Lordship's serious attention, to the invasion of my rights of pro-

perty, which has taken place under the authority of the Proclamation. In that document it was declared that all Forts, Buildings, and trading Stations should be restored "to the party who originally established or constructed the same, and were possessed thereof previous to the recent disputes between the said Companies;"—and it appears that orders were transmitted to the Governor-in-Chief of Canada, by a dispatch of 11th of February, 1817, to enforce this restitution. In giving this order, the Colonial Department unconstitutionally assumed functions which do not belong to the Executive Power. It was not the province of the Secretary of State to determine who were legally entitled to the Forts and Stations alluded to; and that question ought to have been judicially investigated, before an order was given to transfer possession from one party to another. By the operation of this order, the parties who are really aggrieved, are deprived of the opportunity, which they otherwise would have had, of having their rights brought to the test of legal decision. The North-West Company, in whose favour the order was given, are a mere private association of individuals, represented only by agents, who cannot be made to appear in a court of justice on behalf of the Company, unless they think it for their interest to do so. Being, therefore, once put in possession, that Company cannot be compelled, by any ordinary process of law, to submit their claims to legal determination. The Forts and Stations in question, are situated on lands granted by Royal Charter to the Hudson's Bay Company, and possession had been taken of them on that

ground. That Company, as a chartered body, may at all times be found, and cannot evade the responsibility of any act done under the authority of the Charter; so that, if the complaints, which were made to the Colonial Department, had been preferred by petition to the King in Council, or to any competent judicial authority, the validity of the Charter, on the one hand, or of any claims advanced in opposition to it on the other, would have come at once to a regular decision. But by the precipitate and arbitrary interposition of the Colonial Department, the lawful property of those who hold lands under the Charter, has been taken away without investigation, and transferred, by the strong hand of power, to men, who, without any other claim than that of occupancy, are enabled to maintain possession, and to evade any trial of the question of right.

Mr. Coltman, under this clause of the Proclamation, gave his sanction to the North-West Company in re-establishing a trading-post on the scite of one which had served as a strong hold for their half-breed servants, in their attacks upon the Settlement in the year 1815, and which had afterwards been demolished by Governor Semple, as a measure of indispensable necessity for the safety of the people under his charge, — a measure which he had only been too tardy in adopting. When the re-establishment of this post was proposed, I remonstrated with Mr. Coltman against the impropriety of allowing a fortified station to be erected upon my lands in the heart of the Settlement, by men who were bent on its destruction. I offered to allow every reasonable accommodation

to the North-West Company, if they would remove their trading-post to a suitable distance, either up the river or down, where it might have been placed with as much advantage in respect to trade. No attention was paid to these remonstrances, although Mr. Coltman was well aware of the danger to which the settlers were exposed by this measure. When he proposed, some months afterwards, that I should drop the criminal prosecutions against the North-West Company, the relinquishment of this post was one of the advantages offered in return; and Mr. Coltman himself particularly pointed out the security which would be thereby obtained for the settlers.

In other instances Mr. Coltman gave a most undue sanction to claims of former occupancy, so far even as to stop men from cutting hay in an open meadow, because the North-West Company had previously cut hay there.—These infractions of my rights of property, though in themselves trifling, were of serious consequence, as tending to shake the confidence of the settlers in the validity of their own tenures of land. From respect, however, to the Proclamation, I submitted to Mr. Coltman's decision, confiding in the pledge given in that document itself, that “nothing done in consequence of this Proclamation, shall in any degree be held to affect the rights, which may ultimately be adjudged to belong to either, or any party, upon a full consideration of all the circumstances of their several claims.”

That this pledge may at length be redeemed, is the principal object of the application which I now

make to your Lordship. So far as my own rights are concerned, I have always, from the first moment they appeared to be disputed, been desirous to have them brought under the cognizance of some competent tribunal. The King in Council I apprehend to be the only proper authority to determine the extent of the rights of property and jurisdiction vested by Charter in the Hudson's Bay Company, or in those holding under them; but the question cannot be brought under the cognizance of that high tribunal in the ordinary shape of an appeal from the plantations. The North-West Company, indeed, who deny the rights granted by the Charter, might long since have presented,—and they might still present,—a Petition, complaining of the measures which have been adopted under it; but the same course cannot be followed by other parties who have no objection to urge against the Charter. However desirous, therefore, the Hudson's Bay Company may be, that their own rights, and the claims advanced against them, should be investigated and determined by competent authority, it appears that they are precluded from bringing forward the matter in a judicial shape. Upon a reference, however, from the Executive Government, the claims of all the parties may be taken into consideration by the King in Council, as a subject of State Inquiry, connected with a Royal Charter. The question has evidently an intimate connection with those measures, which ought to be adopted by Government for the purpose of remedying the evils that prevail in the interior of

British North America ; and there cannot be a doubt of the propriety of instituting the inquiry, even if no such pledge had been given as that which the Proclamation conveys.

With a view to an investigation of the state of that country, I have to inform your Lordship, that there are, at present, in London, several witnesses who can give most important evidence, and whose testimony it may be of material consequence to call for without delay. One of these witnesses was present at the massacre of Governor Semple and his people, being, indeed, the only individual to whom the servants of the North-West Company gave quarter on that occasion. Another of these witnesses had been taken prisoner, several weeks before, by the same men, and, while he was detained in their camp, had an opportunity of observing the preparations they were making, under the direction of a partner of the Company, to attack and drive away the settlers. Another of the persons to whom I allude, travelled from Montreal along with one of the principal agents, and several of the partners, who came to assist in the work of destruction ; and was a witness both to their hostile preparations before their arrival at the Settlement, and to their conduct after the massacre, in encouraging and rewarding those by whom it had been perpetrated.—I trust that directions may be given for the immediate examination of these witnesses before the Privy Council ; and that such steps may be taken as the purport of their evidence may be found to justify.

Your Lordship will observe, that although no less than thirty-eight individuals, connected with the North-West Company, have been indicted by the Grand Juries of Montreal, for murder, (either as principals or accessories,) only a very small proportion have been brought to trial. It is but too evident, that nothing effectual will be done in Canada as to the prosecution of the other cases which remain untried; but these, I conceive, may be brought to England for trial, under the Act of Henry VIII.—From the correspondence between the Colonial Department and the Directors of the Hudson's Bay Company, in February 1817, it appears, that it was, at that time, in the contemplation of Lord Bathurst, to bring all the parties, accused of the murder of Governor Semple, and of the other persons at Red River, to trial in this country; and it is much to be regretted that this intention was not then carried into effect. The time which has been lost, and the circumstances which have intervened, must be very prejudicial to the interests of justice in any future trials. But, notwithstanding this delay, if an examination be now taken of those witnesses who are in this country, their testimony will, undoubtedly, afford sufficient grounds for issuing orders to bring to England, for trial, most of the parties against whom true bills of indictment have been found for murder, upon charges which yet remained untried. If the authority of His Majesty's Government be effectually interposed for this purpose, and likewise for securing the attendance of material witnesses,

now in British America, there can hardly exist a doubt, that the charges will be fully substantiated before an English jury; and that, by a few examples of punishment, the commission of similar crimes hereafter may be repressed.

With respect to the extraordinary judicial proceedings which have recently taken place in Canada, (the details of which will be found in the accompanying letter of the 30th of January,) your Lordship will see the necessity of instituting a rigorous inquiry, either by a Parliamentary investigation, or under the authority of the King in Council. From any investigation by the Provincial Government of Canada, little can be expected. After the complete failure of Sir John Sherbrooke's anxious endeavours to obtain correct information through the medium of Commissioners, resident in, and connected with the Province, it is not to be supposed that any similar appointment by his successors can have a better result: and it should be recollected, that the Council which the Governor is instructed to consult on all important occasions, is composed, in a great measure, of persons immediately connected with the parties accused, and that several of its principal members are themselves deeply inculpated.

Upon a full consideration of this subject, and on a perusal of the several documents now transmitted, I trust your Lordship will be of opinion, that I am borne out in what I stated in the commencement of this Letter, and that the practical conclusions to be

drawn from the facts of the case will be found to involve no point of serious difficulty. The first step is, to institute a fair and an early inquiry. If, upon due investigation, the rights claimed under the Hudson's Bay Charter, do not appear to be legally vested in the Company, and in those holding under them, let a distinct declaration to that effect be made by competent authority. If, on the other hand, they are found to be lawful and valid, let them be so pronounced. But if these chartered rights, though legally vested in the Company, are supposed to be inconsistent with the public interest, let the parties concerned have a fair opportunity of being heard; and, when a full and public discussion has afforded the means of determining how far that opinion is well or ill-founded, it will then be ascertained whether any interference of the Legislature be necessary on this important subject.

To your Lordship's powerful interposition I must now look for the attainment of some adequate security, against those aggressions which are still aimed against the settlers on Red River. Every means in my power has been exerted for the purpose of protecting the lives and property of these people, and bringing notorious offenders to justice; but, instead of meeting with the support to which I was justly entitled, I have experienced nothing but calumny and persecution. The proceedings in Canada, of which I complain, imperiously call for investigation;—and after the fatal consequences which have arisen from the uncertainty that has been allowed to prevail, with

respect to disputed claims of right and jurisdiction,
I cannot entertain the idea that your Lordship will
be disposed to suffer any further or unnecessary delay
in bringing them to a final determination.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

SELKIRK.

The Earl of Liverpool,
&c. &c. &c.

*Correspondence in the years 1817-18-19, between
EARL BATHURST and J. HALKETT, Esq. on
the Subject of the Red River Settlement, &c. &c.*

Seymour Place, July 10, 1817.

MY LORD,

In transmitting to your Lordship, as head of the Colonial Department, the accompanying Statement, relative to the Settlement which the Earl of Selkirk has attempted to establish on the Red River, in North America, I hope I shall not be considered guilty of any improper intrusion upon your Lordship's time and avocations, if I request that it may obtain an attentive perusal. The circumstances to which it refers have been stated by Lord Selkirk's enemies in such a manner, as to make it no more than an act of bare justice that a willing ear should be lent to what his friends in England have, in his absence, to urge in his defence. His opponents are but too well aware of the importance of concealing the truth with respect to the conspiracy entered into against the Red River Settlement, not to make it a material object for them to resort to any means for the purpose of misleading Government, and deluding the public,—and in this respect it is much to be lamented that they appear hitherto to have been not unsuccessful.

It may, however, be not yet too late to do Lord Selkirk justice; and if the documents contained in the Statement, herewith transmitted, be perused with attention, I think no doubt will remain that the assertions made by his opponents relative to the Settlement in question, are unworthy of belief.

In the Observations subjoined to the Statement, your Lordship will perceive the reason which Lord Selkirk has given for not submitting to the first warrant which the North-West Company, after various attempts, procured for the purpose of apprehending him at Fort William.

With regard to the second one, obtained for a similar purpose, I have, since the accompanying Statement was sent to press, been put in possession of a copy of the Information upon which such warrant was founded. It is sworn to by two clerks of the North-West Company—Vandersluys and M'Tavish—who were at Fort William at the time; and it will scarcely be believed that their charge against Lord Selkirk, upon which the warrant was issued, is, that he “feloniously stole, took, and carried away” eighty-three fusils belonging to the North-West Company,—which fusils, there is unquestionable evidence to shew, were taken out of the magazine, and loaded and concealed under the directions of the Company’s partners, for no purpose whatever but the projected destruction of Lord Selkirk and the whole of his party,—and the preventing them from making this use of these arms, is the act of felony,—and the only one,—upon which they obtained their warrant to apprehend him.

I enclose a copy of the Information alluded to* ; and have only to add, that the friends of Lord Selkirk have always been, and now are, ready, when called upon, to answer every inquiry, and to afford material information upon the subject of those proceedings in North America, which have been so much misrepresented, and with respect to which he has been so unjustly aspersed. The more rigid that inquiry, the more satisfactory it will prove to those who feel themselves called upon, in his absence, to do every thing in their power fairly, but firmly, to defend him.

I have the honour to be,

My Lord,

Your Lordship's obedient

And humble Servant,

J. HALKETT.

Earl Bathurst,
&c. &c. &c.

Downing Street, July 17th, 1817.

SIR,

I am directed by Lord Bathurst to acknowledge the receipt of your Letter of the 10th instant, inclosing a Statement relative to the Settlement which the Earl of Selkirk has attempted to establish upon the Red River in North America; and to assure

* See Appendix, [A.]

you, that his Lordship will not fail to give to that Statement, and the documents annexed to it, all due consideration.

I have the honour to be,

Sir,

Your most obedient,

Humble Servant,

HENRY GOULBURN.

J. Halkett, Esq.

Seymour Place, July 18th, 1817.

MY LORD,

Since I had the honour of transmitting to your Lordship, on the 10th instant, a copy of a Statement respecting the Earl of Selkirk's Settlement upon the Red River, and his proceedings in North America, I have been furnished with one of the printed Proclamations which was issued at Quebec by Sir J. Sherbrooke, on the 3rd of May last, in obedience to the orders of His Majesty's Government.

As the Proclamation in question has evidently originated from assertions made to Government by Lord Selkirk's opponents; and as it obviously points, with no slight degree of animadversion, to acts supposed to have been committed by him, I beg leave, in his absence, to submit to your Lordship such circumstances as ought, I conceive, to satisfy His Majesty's Government, that the reprehension cast upon Lord Selkirk by that Proclamation, was premature, and unjust.

I advert particularly to that part of the Proclamation which declares, that, "in order to prevent the
 "further employment of an unauthorised military
 "force, all persons who have been heretofore engaged in His Majesty's service, as officers or soldiers, and as such have enlisted and engaged in
 "the service of the Hudson's Bay Company, or the
 "North-West Company, or either of them, or any
 "of their servants, agents, or adherents, must leave
 "the service in which they may be so engaged,
 "within twenty-four hours after their knowledge of
 "the Proclamation, under penalty of incurring the
 "most severe displeasure of His Majesty, and forfeiting every privilege to which their former employment in His Majesty's service would otherwise
 "have entitled them."

Your Lordship will please to observe, that, as no charge has ever been made from any quarter against the North-West Company, with regard to their employment of an unauthorised military force, or that any officers or soldiers heretofore engaged in His Majesty's service, had been enlisted or engaged to serve them, their servants, agents, or adherents;—but, on the other hand, as accusations to that effect have been repeatedly preferred against Lord Selkirk by his opponents in that Company, the animadversions contained in the Proclamation, in that respect, can only be considered as applicable to him. Lord Selkirk, therefore, at present stands seriously, though indirectly, charged, upon the face of that Proclamation, with having employed an unauthorised military force, and having enlisted, or engaged, for improper

purposes, soldiers who had been formerly employed in His Majesty's service.

Before His Majesty's Government ought thus to have conveyed so heavy a charge, they were bound, by every principle of justice, to have inquired into the truth of the accusation. Had this step been taken, it would have clearly appeared, that there was no employment, on the part of Lord Selkirk, or, indeed, of any person whatever, of an unauthorised military force, nor any enlisting of soldiers, or engaging of officers in any service or employment, from which they were, by law, precluded.

When several of the officers, and about a hundred of the privates, of the reduced regiments of De Meuron and Watteville, entered into agreements, last year, with Lord Selkirk, to settle upon his lands at the Red River, there existed no legal impediment against such measure. They were as fully entitled to establish themselves at that Settlement, as any of the Highland or other emigrants who had repaired thither from the mother country; and to protect whom, at the proposed Settlement, His Majesty's Government had itself directed arms and ammunition to be issued in the year 1813. The Proclamation, in commanding these discharged officers and soldiers to leave, within twenty-four hours notice, the employment for which they are contracted, and to break the agreements which they had entered into, was, I humbly conceive, assuming a power with which Government itself could not be legally vested:—and nothing can evince more strongly the truth of what is thus asserted, than a circumstance which

has recently occurred at Montreal, under the cognizance of the very Commissioners named in the Proclamation, as having been appointed with full powers to investigate the late occurrences that have taken place in the interior of North America.

An additional number (about fifty) of the discharged soldiers of the De Meuron regiment who had remained in Canada, recently applied to Lord Selkirk's agents at Montreal, for permission to join those who had accompanied him last year into the interior. After the strictest inquiry into the conduct and character of these men, they were allowed to enter into the same agreements with the others. When upon the eve of their departure, the Commissioners called them before them, in consequence of some depositions upon oath produced by the North-West Company, that those discharged soldiers were engaged for hostile purposes and military service. The Proclamation was read to them,—their contracts were inspected,—parties were examined upon oath, under the authority of the commission,—and, after a long investigation, and every possible opposition on the part of the North-West Company, every one of these men was permitted to proceed on his destination. This additional party of settlers has, accordingly, set out to join Lord Selkirk in the interior, and has done so, in the presence of the Commissioners, with the Proclamation in their hand, although they certainly were, in every respect, as unauthorised a military force, and as much composed of soldiers heretofore employed in His Majesty's service, as those who had accompanied Lord Selkirk

the year before,—a measure for which he is so hardly and so unjustly dealt with, in the Proclamation which Government has issued.

This circumstance I take the liberty to mention, as being one of the numerous cases, in which, were His Majesty's Government strictly to investigate, it would be found, that the accusations and assertions submitted to them on the part of Lord Selkirk's enemies, are totally destitute of truth.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

J. HACKETT.

Earl Bathurst,

&c. &c. &c.

Seymour Place, 31st July, 1817.

MY LORD,

In the letter which I had the honour of addressing to your Lordship on the 10th instant, upon the subject of Lord Selkirk's proceedings in North America, I transmitted the copy of a deposition upon oath taken of two clerks of the North-West Company, Vandersluys, and M'Tavish, for the purpose of grounding upon it a warrant to apprehend Lord Selkirk on a charge of felony. I mentioned that the only circumstance, however, which these convenient deponents had been able to fix upon, or could muster courage enough to swear to, in order to obtain such

warrant, was, that Lord Selkirk, and several gentlemen who were with him, had feloniously stolen, taken, and carried away, eighty-three fusils, belonging to the North-West Company. These fusils had been seized, and secured, in consequence of a search-warrant issued by Lord Selkirk, as a magistrate, information having been given to him, early in the morning of the 14th of August, that notwithstanding the North-West Company's partners (who had been apprehended at Fort William) had pledged their word of honour that no further obstruction to the arrests should take place, or any other act of hostility be contemplated on their part, the fusils in question had been secretly taken in the night time, from the magazine in the fort, and put in a place of concealment for some treacherous purpose. In consequence of the search-warrant so issued, these arms were discovered fresh loaded and primed, and secreted under some hay in a building adjoining the fort. Of this fact there does not exist the slightest shadow of doubt, and it was accordingly communicated at the time, together with the details of the other proceedings at Fort William, in a letter from Lord Selkirk, dated the 31st of August last, to Mr. Gore, the Lieutenant-Governor of Upper Canada,—a copy of which letter I conclude was officially transmitted to your Lordship by that gentleman.

In the printed Statement which I sent to your Lordship with my letter of the 10th instant, the circumstance above noticed is adverted to. It was not only asserted by Lord Selkirk in his official com-

munication to Governor Gore, but it is also detailed in the several accounts drawn up and signed by Mr. Fauche, Mr. M'Nab, and Alexander Fraser, all of whom were upon the spot at the time, and whose separate narratives form part of the documents inserted in the Appendix to the Statement which I had the honour of transmitting to you. Fraser was a hired servant of the North-West Company, and had resided several years at Fort William. He positively swears that he saw the partners busily engaged in examining, and burning a large quantity of their papers, on the night of the 13th of August; and that, during the same night, the fusils were removed from the magazines in which they were commonly deposited, and in which it was not usual to keep arms loaded; but that "the guns removed from thence were found loaded, primed, and ready for use, concealed in a hay-loft at Fort-William, the morning following the arrest of the partners;" and "that barrels of gunpowder were also removed and hidden, during the same night."

If the fact be once admitted,—and it cannot, with any semblance of truth, be denied,—that the fusils were thus taken out of the magazine in the night-time, after the partners, who were arrested, had been permitted to return on their parole to their apartments in the fort,—there will scarcely exist a doubt in the mind of any one, as to the persons by whose directions these arms were surreptitiously purloined, loaded, and concealed; or the purpose for which they were so prepared and secreted. Indeed, it is highly probable, that the very clerks, Vander-

sluys and M'Tavish, (to whom the Company's partners, after their arrest, gave the charge of managing their affairs at Fort William,) were themselves employed, during the night, in clandestinely preparing and secreting those fusils, for the purpose of destroying Lord Selkirk and his party; and which they have since solemnly sworn were "feloniously stolen and "taken away," because Lord Selkirk and his friends, by seizing and securing them, thought fit to prevent them from being used in the projected destruction of himself and his party.

My principal reason for again intruding upon your Lordship with this part of the subject of Lord Selkirk's proceedings, is to mention, that, by another deposition, recently received from Canada, the facts above stated are most strongly corroborated, as well as the use pointed out, which was intended to have been made of these very arms which were so fortunately discovered and secured at Fort William, and for the seizure of which a warrant for felony has been obtained.

Louis Blondeau, one of the engagés, or hired servants, of the North-West Company, has recently made a detailed affidavit before a magistrate at Montreal, in which he has stated many of the circumstances, and plans of aggression, instigated by the North-West Company against Lord Selkirk and the Red River Settlement. He concludes his deposition as follows:—

"Que le déposant est parti de Fort Cumberland, dans le mois de Juin, et s'est rendu à Fort William vers le 15^{me}.

“ de Juillet, où il a resté jusqu’à l’arrestation des associés
 “ de Nord-Ouest par Lord Selkirk:—Que le Lord Selkirk
 “ n’a pas pris possession de Fort William aussitôt que
 “ l’arrestation des associés a eu lieu, mais que les associés
 “ avoient été permis d’occuper leurs chambres dans le fort
 “ pendant la nuit suivante. Que le dit déposant étoit logé
 “ en tente au dehors du fort mais près de celui-ci. Et que
 “ pendant la nuit sa femme qui l’avoit rejoint, a réveillé
 “ le déposant, en disant qu’elle pensoit que quelqu’un
 “ commettoit des vols, parce qu’elle entendoit du bruit.
 “ Que le déposant s’est alors levé, et sorti, pour sçavoir
 “ ce qui en étoit, qu’il se rangeoit près des pieds du fort,
 “ pour ne pas être vu, et qu’il entendoit une personne qui
 “ marchoit alors près de lui, dire à un autre, “ Sçais-tu bien
 “ que nous faisons un mauvais coup, de charrier des armes
 “ de même, parce que si s’étoit sçu, on nous feroit prendre.”
 “ Son compagnon alors lui disoit, “ Comment veux-tu que
 “ cela soit decouvert? Nous allons cacher les armes dans
 “ le grenier à foin, personne ne pourra les trouver là.”
 “ Ensuite celui qui avoit parlé le premier, répliquoit “ Les
 “ bourgeois qui nous font cacher ces armes, ont encore
 “ quelque mauvais dessein à faire, et c’est nous qui en
 “ patirons.”

“ Que le dit déposant a écrit aussitôt de bon matin le len-
 “ demain, un billet au Lord Selkirk, l’informant que l’on
 “ avoit caché des armes dans le grenier à foin. Que le
 “ déposant a entendu dire à des engagés du Nord-Ouest,
 “ quelque temps après, que les armes avoient été cachées
 “ afin de fournir aux gens du Nord-Ouest les moyens de dé-
 “ truire les gens qui gardoient les prisonniers dans le fort,
 “ et qu’ensuite, comme le Lord Selkirk étoit campé avec
 “ ses gens dans une prairie, les gens du fort pouvoient
 “ aisément les attaquer, et les massacrer.

“ Que le Lord Selkirk en recevant le billet du déposant,
 “ est venu toute de suite, lui-même parler au déposant, et
 “ le prenoit par la main, en la serrant, et disant, qu’il le

"deposant) lui avoit rendu service, et l'avoit exempté
 "d'un grand danger. Qu'alors le Lord Selkirk a donné un
 "warrant pour faire la recherche de ces armes, et que
 "quarante fusils, chargés à balle, et amorcés, prêt à tirer,
 "avec, en outre, quatre caisses d'autres fusils ont été trouvés
 "dans le grenier que le deposant avoit indiqué. Qu'en
 "outre, des barils de poudre, une quantité de balles, et un
 "grand nombre de fusils ont été trouvés cachés dans
 "d'autres endroits. Qu'ensuite le Lord Selkirk a pris pos-
 "session de Fort William. Et le deposant dit de plus,
 "qu'il croit fermement d'après le caractère emporté et san-
 "guinaire des associés, et de leurs gens au Fort William,
 "et les circonstances venues à sa connoissance, que ni la vie
 "du Lord Selkirk, ni celle de ses hommes, n'auroient été
 "en sureté s'ils avoient resté dans la prairie où ils avoient
 "premièrement campé, et que le dit Lord Selkirk et ses
 "gens auroient été massacré pareillement aux gens de la
 "Rivière Rouge, si le dit Lord Selkirk n'avoit pas immé-
 "diatement pris possession du Fort William."

(Signé) "LOUIS BLONDEAU."

Affirmé devant moi,

le 6^{me} jour de Mars 1817.

(Signé) "J. M. MONDELET, J. P."

It certainly appears to have been the height of
 imprudence in Lord Selkirk to have suffered the
 North-West Company's partners, whom he arrested
 at Fort William, to return to their apartments in
 the fort, without placing them under some more
 secure guard than their parole of honour. He ought,
 by that time, to have been better acquainted with
 the general character of the partnership; and not to
 have placed, by his imprudent indulgence, the lives
 of his whole party at so great a risk. It is evident

that they made a very narrow escape; and, had they been surprised and assassinated, the North-West Company would, of course, have done exactly as they did with respect to the massacre of Governor Semple and his people at Red River; and have immediately and boldly asserted to His Majesty's Government, that the event was entirely owing to the "mad and infatuated violence" of the sufferers; or, which was equally false, to "Indian hostility and resentment."

I trust, my Lord, that, on this part of the subject, it is not necessary for me to urge more, in defence of Lord Selkirk and the gentlemen who accompanied him, than merely to submit the circumstances above stated. No person of candid mind will pronounce, that, because they seized and secured those weapons, which were evidently intended for their destruction, there existed thereby any ground for a criminal warrant to arrest them; and if, under the circumstances in which they were placed, they are to be considered free from blame in not surrendering to the second warrant,—they will, no doubt, be equally exculpated for not having yielded submission to the former, but similar, attempt to apprehend them.

In the former attempt, several of the Judges in Upper Canada had, in the first instance, been applied to by the North-West Company, but refused to grant a warrant, as they saw no ground for a charge of felony. But there being no ground in law for granting such warrant, was not deemed by the Company a sufficient reason for desisting from

their endeavours to obtain it. They accordingly procured, at Drummond's Island, on Lake Huron*, a warrant from a magistrate, "whose notorious habits "of intemperance," (as stated by Lord Selkirk in his official letter to Governor Gore, of the 12th November last, a copy of which I presume, Mr. Gore transmitted to your Lordship,)—"whose notorious "habits of intemperance rendered it in the highest "degree probable that his signature had been "obtained surreptitiously." To this warrant, which Lord Selkirk also asserted to have been not only in several respects irregular, but "founded on the "recital of an affidavit full of the grossest perjuries," neither his Lordship, nor the gentlemen whose names were included in the charge, chose to submit. After the knowledge they had recently acquired of the sanguinary intentions of the North-West Company, it could scarcely be expected that, in obedience to a document so produced, they would place themselves in the power, and at the mercy, of a partner, clerk, and constable of the Company, and entrust themselves to them, and their hired attendants, during a journey and voyage of many hundred miles. At the very moment that the warrant was presented at Fort

* This is a mistake. The magistrate to whom the North-West Company applied after the refusal of the judges, was a Mr. Baby, of Sandwich, who, upon the affidavit of Vandersluys, and M. Tavish, issued the warrant for Felony. The warrant which the North-West Company obtained from Dr. Mitchell of Drummond's Island, was on a charge of Riot, &c.

William, one of the Company's clerks and constables was in custody at that place, by Lord Selkirk's directions as a magistrate, for a murder recently committed by him upon Mr. Owen Keveney, whom that clerk had, in his capacity of constable, apprehended by a warrant issued by one partner, and murdered by the orders issued by another; and there is no reason to believe that the partnership would have dealt more gently with Lord Selkirk, had he become their prisoner, than they had done with respect to Mr. Keveney.

Your Lordship, in considering the circumstances above stated, will, I trust, be of opinion that Lord Selkirk, and the other gentlemen whose names were included in these warrants, cannot be justly blamed for having refused to obey them.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

J. HALKETT.

Earl Bathurst,

&c. &c. &c.

August 23rd, 1817.

MY LORD,

However unwilling I am to continue giving trouble to your Lordship on the subject of the Earl of Selkirk's proceedings in North America, yet as

he cannot, in his present situation in the interior of the country, be aware of, or able to contradict, the numerous misrepresentations which his enemies in England have not scrupled to submit to his Majesty's Government, I beg to request your Lordship's attention to several depositions which have been lately received from Montreal,—copies of which I have the honour of herewith transmitting for your Lordship's consideration.

Perhaps it may be thought superfluous in me to lay these documents before your Lordship, as they only form an addition to the mass of evidence already produced; and which may perhaps have been deemed fully sufficient to satisfy Government, that the successive and disgraceful aggressions against the Red River Settlement were exclusively instigated by the North-West Company. But, I trust, that your Lordship will at the same time admit that Lord Selkirk's friends ought, in his absence, rather to err in submitting to Government too many, than too few of the numerous documents which they have received from North America, as connected with his conduct and proceedings in that quarter, and which they have all along been anxious to see rigidly, but impartially, investigated.

In addition to the proofs exhibited in the Appendix to the printed Statement, which I had the honour of transmitting to your Lordship on the 10th ultimo, the accompanying depositions of McEachern and Leyden*, deserve particular attention,

* See Appendix, [B. & C.]

as they confirm, in the strongest and most marked manner, this plain and simple fact,—that the unwarrantable attack upon the Red River Settlement, in the year 1815, was, solely and exclusively, the work of the North-West Company.

I beg also particularly to request your Lordship's attention to another deposition herewith transmitted*, of Alex. Johnson Williamson, late a clerk in the employment of the North-West Company, and who was at Fort William (in the summer of that year,) when many of the colonists were brought down to that place, after having been seduced and bribed to break their contracts, and desert from the Red River Settlement—most of them in debt to their employer. Williamson states, in his affidavit, that, at the time of the arrival of those colonists, there were nine partners present belonging to the North-West Company, all of whom manifested the greatest joy at those transactions which had occurred in the Settlement, and which had ended in the dispersion of the settlers. Among these nine partners (whose names are inserted in the affidavit) was Mr. Simon M'Gillivray, one of the Company's agents, who gave special directions, in a letter addressed by him to another partner, Mr. Alexander M'Donell (whose name has been sufficiently notorious throughout all these transactions, and who was then employed in taking the examinations of the settlers,) in which he, M'Gillivray, "found fault with the taking up so much time" in the said examinations, and suggested the expe-

* See Appendix, [D.]

“ diency of getting at something that might criminate, or throw blame upon, Lord Selkirk; observing that the said M'Donell ought to find out some of the said settlers, who could, or would, swear to circumstances that might have that effect.”

It is somewhat curious to observe, that Mr. Simon McGillivray (who is thus stated in Williamson's affidavit, to have been directing those miserable witnesses to be tampered with, for the purpose of producing such testimony as the Company hoped might criminate Lord Selkirk) is the same person who, only a few weeks before, addressed a letter from Montreal (dated 19th of June, 1815) to your Lordship, as one of His Majesty's Secretaries of State, in which, praising, as usual, the humanity of himself and his partners, he expressed his hope that the verbal communication, which he stated he had the honour of making to your Lordship, on his leaving London, would remove any impression unfavourable to the North-West Company, which, as he asserted, had been most unjustly calumniated. “ The massacre of my deceived countrymen on the Red River,” says he, “ I consider an evil by no means improbable, but the idea of instigating so horrid a deed, I, for myself, and on behalf of my connections, most solemnly and indignantly deny ;—and I hope we are too well known to render the denial necessary,” &c. &c. If your Lordship would be pleased again to refer to that letter, I think you will be fully satisfied, (now that these parties are certainly not less known than they were

when the letter was written) that no document can shew more clearly the contrast between the professions and the practice, of the Company; on whose behalf Mr. Simon M'Gillivray transmitted the official communication alluded to.

There appears, however, to be another Mr. Simon M'Gillivray (also employed in that Company's service) who, in his correspondence on the subject of the Red River Settlement, is rather more candid and ingenuous than his kinsman. About the same moment that the letter above cited was addressed to your Lordship, another was written by the Simon M'Gillivray, to whom I allude, and addressed to another relative—a Mr. Archibald M'Gillivray—in the following plain and honest terms :—

*Bas de la Rivière,
July 2d, 1815.*

"MY DEAR ARCHY,

"Every thing is in a bustle here at this present moment, and every preparation has been made to be off to day ;—but cannot till to-morrow.—*I am happy to inform you that the Colony has been all knocked on the head by the North-West Company.*—

"We have still another formidable opposition coming straight to Athabasca from Montreal, headed by Messrs. Clarke, Robertson, and Decoigne, and one hundred Canadians ; they are well stored with whole pieces. This destruction of the Colony will frustrate their plans a great deal, as they will be deprived of assistance in regard to provisions. Plans have been devised how to stop their progress by our proprietors, but no decisive measures have been taken ; but there certainly will be some executed by main force.—All the proprietors are here assembled, with

“Messrs. M’Kenzie, and Frazer. Mr. Keith and Co, are
 “a-head. As those fellows are pretty desperate who are to
 “oppose us, it is very likely to think that some serious
 “consequences will take place; and I avail myself of this
 “opportunity to write to you, that in case my services
 “should be wanted to seize one of them, I certainly will do
 “my best, but cannot answer for the result.—I have reflected
 “on this affair a long time, and find it a perplexing one.—
 “Now, my dear friend, to the point;—in case that kind
 “Providence takes me away to a better world in a fray
 “with those fellows, I, in a manner, make a kind of will;
 “which I dispose of all for the benefit of—” &c. &c.

(Signed) “SIMON M’GILLIVRAY.”

It does not appear, however, that Providence has been yet so kind as to take away this testator to a better world;—for, by Mr. Pritchard’s Narrative (referred to in the printed Statement I had the honour of transmitting to your Lordship), it appears, that this Mr. Simon M’Gillivray again exhibits himself, heading a party of the North-West Company’s half-breeds in their expedition against the Red River Settlement, at the time when Governor Semple and his party were butchered, and the Colony a second time “knocked on the head by the North-West Company.”

A profusion of letters have been recently obtained, and transmitted to this country, which strongly elucidate the deep-laid schemes, and machinations entered into by the Company to destroy the Red River Settlement. These, and numerous affidavits which have never yet been submitted to your Lordship, shall be

copied and laid before you, if required, together with any explanation His Majesty's Government may call for. No evidence can tend more strongly to evince the intentions of the Company's partners with regard to the Red River Colony, than the general tone of the letters alluded to. One of these partners, Mr. Robert Henry, for instance, writes to his uncle from Fort William, on the 3rd of June, 1816; and, after mentioning, that "we have sent off an express to Fond du Lac, to raise the Indians, and meet us at Red River; and we also take some of the Lac la Pluie Indians," he proceeds, "we start to-morrow for Red River, about fifty men and gentlemen; I would not be surprised if some of us should leave our bones there. In case it may be my fate, is my reason for writing to you at present. I am very much afraid it will be a serious business, but must hope for the best. I expect William will come out; in which case, he will certainly go down; and, should I return from Red River safe, I feel myself much inclined to leave this rascally country for ever."—He concludes his letter by saying, "I imagine that they" (the colonists and Hudson's Bay Company servants at Red River) "are about one hundred and fifty strong there; so that, if it comes to a battle, many lives must be lost. In case of any misfortune happening to me, my papers are all at your house, in which I left my will. Having a great deal to do, I must conclude, wishing you all manner of happiness."

I remain, &c. &c. &c.

R. HENRY.

Some time afterwards the same partner sends another dispatch, (dated Fort William, 22nd of July, 1816,) in which he says, "I wrote you when I left this for Red River.—Nothing of importance occurred on our way there. We arrived at that place the 22nd of June, and, thank God, three days after the battle with the half-breeds and Hudson's Bay people."—This laudable gratitude for having not reached the spot till after the danger was over, again bursts forth in his letter: "I thank Providence," continues Mr. Henry, "that the battle was over before we got there; as it was our intentions to storm the fort. Our party consisted of about one hundred men, seventy fire-arms, and two field-pieces."

Mr. Henry is not the only partner who dignifies the cowardly and brutal massacre of Governor Semple and his party with the name of a *battle*. Mr. Daniel M'Kenzie, another of the partnership, in a letter from Fort William, dated 13th of August, 1816, says,—

MON CHER ONCLE,

"I have stolen from my extreme business to write you a few lines. You must have heard of the battle that took place in Red River on the 19th of June last. Your son was in the battle, behaved most nobly, and escaped unhurt. We lost one man, Battoche's son. Twenty-four of the Hudson's Bay men were killed. The battle took place two hours before sun-set. Five of the officers were amongst the number. The com-

“ mander, Mr. Robert Semple, also fell, and all the
 “ colonists sent off for the Bay.”

Another partner, Mr. Archibald M'Lellan, (the person by whose directions Mr. Keveney was recently murdered) writes, about the same time, from Bas de la Rivière, 20th July, 1816, to Mr. John M'Tavish, another of the Company's partners:—

“ MY DEAR SIR,

“ Your esteemed favour of the 29th of May
 “ last was handed me by Daniel, who arrived here
 “ with a party of Iroquois, and is now on his way
 “ to the Forks of Red River. I expect him back
 “ to-morrow, when he will return to head-quarters.
 “ Although I sit down to write these few lines, you
 “ must not expect from me a full account of all the
 “ ups and downs that have taken place in the North-
 “ West since last fall.—If his Lordship was furious
 “ at the dispersion of his Colony last spring, what
 “ must his feelings be, when he gets a full account
 “ of this last campaign! I believe we have given
 “ a strong pull already, and, if his Lordship or his
 “ associates, are any way stubborn, that a pull alto-
 “ gether is very easily done.”

In short, the whole of their correspondence, as well as their conduct, both before and after the successive aggressions against the Red River Colony, evidently shew, that the work of its destruction is to be ascribed to them,—and to them only.

I beg leave also to mention to your Lordship, that a certified copy has been recently transmitted to this

country of that most important document, the Book of Account which was opened between the North-West Company and those settlers whom they seduced to desert from the Settlement, and whom they brought down to Fort William.—This book (as well as many of the other documents to which I have alluded) has been regularly and legally authenticated at Montreal. The entries, &c. have been proved to be in the handwriting of the partners, by the testimony of several of their own clerks and servants.—These, together with all the affidavits relating to them, shall be transmitted to your Lordship, if required.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

J. HALKETT.

Earl Bathurst,

&c. &c. &c.

Downing Street, Sept. 1st, 1817.

SIR,

I am directed by Lord Bathurst to acknowledge the receipt of your letter of the 23d ult., transmitting certain affidavits connected with the recent proceedings in Upper Canada and the Indian territories, in which the Hudson's Bay and North-West Companies are implicated, and to acquaint you that your communication only tends to confirm the opinion which Lord Bathurst has always entertained, that there can be no satisfactory termination of the

unfortunate disputes between the two Companies, but by bringing the matter to the decision of a Court of Justice. That his Lordship being aware of the objections which might be taken to a decision of the Courts in Canada, has done every thing in his power to facilitate the trial of the question at issue before the Courts in this country. In the mean time Lord Bathurst has great satisfaction in finding that with respect to the measures which have been adopted, Lord Selkirk has expressed his opinion that "The appointment of the Commissioners, and the placing that important charge in such respectable hands, has afforded a satisfaction and relief to his mind greater than he could well express, and that whatever measures these gentlemen may adopt for restoring tranquillity, will meet with every support which it is in his power to afford."

I am, Sir,

Your most obedient Servant,

HENRY GOULBURN.

J. Halkett, Esq.

St. Mary's Isle, Kirkcudbright, Sept. 29th, 1817.

MY LORD,

I have had the honour of receiving Mr. Goulburn's letter of the 1st inst. (recently forwarded from London to this place,) in which he informs me that he was directed by your Lordship, to acknowledge the receipt of my letter of the 23rd of last month, and of the several affidavits accompanying it. The letters which I had the honour of addressing to

your Lordship upon the same subject on the 18th and 31st of July, I trust have also been safely received.

As Mr. Goulburn's letter describes the affidavits transmitted by me on the 23rd ult. as being connected with recent proceedings, in which the Hudson's Bay, and North-West Companies, are stated to be implicated;—and as he adds, that my communication (of the 23rd,) only tends to confirm the opinion which your Lordship always entertained, that there could be no satisfactory termination of the unfortunate disputes between the two Companies, but by bringing the matter to the decision of a Court of Justice,—I must beg leave to state,—what, indeed, a perusal of the documents themselves, I conceive, might have shewn,—that the communications transmitted by me applied to matters of much higher importance than any disputes between these trading Companies. They related to charges of violent and repeated outrage, committed by British subjects upon British emigrants, who, with the knowledge and sanction of Government, were peaceably establishing themselves as cultivators of the soil within British territory. In supporting such settlers, and in taking the requisite means to defend his own, and their, rights of property, against such disgraceful aggression, Lord Selkirk has experienced, both in this country, and in Canada, every degree of illiberality and injustice. To enable your Lordship, as Secretary of State for the Colonies, to judge more distinctly of the whole of those proceedings in North America, in which Lord Selkirk has been engaged, and to lay

before you the proofs of those criminal outrages instigated against the Red River Settlement by the North-West Company of Montreal, has been the object of those letters and documents which I have had the honour of transmitting to you. But with respect to the mercantile disputes of the Hudson's Bay, and North-West Companies, I must take leave to disclaim the slightest wish of entering upon such a topic, or of intruding the subject, in any shape, upon your Lordship's department,—agreeing, as I most cordially do, with those sentiments expressed in a letter which your Lordship directed to be written by Mr. Goulburn to the Governor of the Hudson's Bay Company, in January last,—namely, that the question was no longer how to settle the conflicting claims of two mercantile Companies, but how to bring to condign punishment the perpetrators of those outrages of every description which had been committed.

In the letter which I had the honour of addressing to your Lordship on the 10th of July last, I stated that it was perhaps not yet too late to do Lord Selkirk justice;—but I must be permitted to add, that he appears to have just cause to complain of the conduct of Government, who seem willing indeed to await the decision of Courts of Justice, with respect to disputes between mercantile Companies, but who, at the same time,—without any judicial decision whatever, and without even instituting any serious inquiry on the subject,—appear to have lent an ear to every vague, and, I may add, every absurd story invented by his avowed and inveterate enemies;

and have, in consequence, not hesitated to publish those charges against him, which are so obviously conveyed in the Proclamation which they directed the Governor-General of Canada, to issue in May last. Lord Selkirk, therefore, has good reason to impute blame to His Majesty's Government, for issuing that document, without having ascertained one single fact upon which the accusations implied in it could justly be founded.

With respect to what is stated (in Mr. Goulburn's Letter) to have been expressed by Lord Selkirk, that "the appointment of the Commissioners, and the placing that important charge in such respectable hands, had afforded a satisfaction and relief to his mind greater than he could well express; and that, whatever measures these gentlemen might adopt, for restoring tranquillity, would meet with every support which it was in his power to afford,"—I must be allowed to observe, that it was natural for Lord Selkirk to hail, with heart-felt satisfaction, any measure which might eventually tend to procure for his settlers that protection, which had been so long, and so fatally, withheld from them, and to bring to condign punishment the perpetrators of those criminal acts, of which His Majesty's Government had been so often apprised. With respect, however, to the appointment of the Commission of Inquiry alluded to, the merit of that step rests entirely with the Governor-General of Canada; and, if the Commissioners, named by Sir John Sherbrooke, act with the ability and integrity anxiously looked for by him in their selection, Lord Selkirk will have no reason

to fear the result, or to change the sentiments stated, in Mr. Goulburn's Letter, to have been expressed by his Lordship, on the subject of their appointment*.

It ought to be observed, however, that Lord Selkirk has hitherto been left almost to his own individual exertions, in attempting to put a stop to the atrocities committed in those distant regions, and in bringing to justice those who were implicated in committing them. On this point I am happy to inform your Lordship, that, with respect to one of those atrocities,—I mean the murder of Mr. Keveney in September last,—it appears, by recent accounts from Canada, that Lord Selkirk has not only succeeded in getting the clerk of the North-West Company, Serjeant de Reinhard, (who confessed having aided in that murder,) safely lodged in the prison of Montreal, but has also been the means of apprehending M'Lellan, the Company's partner, by whose order Mr. Keveney was assassinated, and against whom a bill of indictment has been found by the Grand Jury in Lower Canada.

To stop Lord Selkirk, however, in his progress of bringing to light the crimes of the North-West Company, it appears (by the same late accounts from Canada), that the Company had obtained, and sent up into the interior, another, and third warrant for his apprehension. This third attempt to arrest him, on a charge of felony, appears to have been

* See also on this subject, the Letter of the 21st of February, 1818, page 89.

attended with circumstances even more disgraceful, if possible, than the two former ones. In the communications I have had the honour of submitting to your Lordship, I mentioned that the first of these warrants was obtained from a drunken and superannuated magistrate in Upper Canada, after the judges of the province, to whom application had been made on the part of the North-West Company, had refused to grant it*. The second, your Lordship may recollect, was issued upon the affidavit of a wretched clerk of that Company, who swore that Lord Selkirk had feloniously stolen and carried away some fire-arms belonging to the partnership—which arms (as appears by undoubted evidence) had been secretly prepared for the assassination of Lord Selkirk and his party. The third warrant, of which the following is a copy, is founded upon a similar allegation, and attended with circumstances still more disgraceful.

Western District, } William Handes, Esq. Sheriff, of
to wit. } the Western District.

“To Jean Baptiste Blondin, Special Bailiff, greeting,

“By virtue of His Majesty’s Writ to me directed, I
“command you that you take the Right Honorable Thomas
“Douglas, Earl of Selkirk, Frederick Matthey, Proteours
“d’Odet d’Orsonnens, John M’Nab, Donald Macpher-
“son, Gustavus Adolphus Fauche, John Allan, Miles
“Macdonald, John Spencer, and Frederick Graffenreid,
“or either of them, if they shall be found within the dis-

* This is not correct. The error is explained in the Note to the Letter of the 31st of July. See page 59.

"strict, and then safely keep, so that they may have their
 "bodies before François Baby, Esq. one of His Majesty's
 "Justices of the Peace for the District aforesaid, at Sand-
 "wich, to answer His Majesty for a Felony which they,
 "as it is alleged, have committed, and further to be dealt
 "with according to Law. Herein fail not.

WILLIAM HANDES, Sheriff (L. S.)
 WILLIAM SMITH, Under-Sheriff.

19th Oct. 1816. W. D. U. C.

This writ, like the former ones, was sent up to Fort William, for the purpose of apprehending Lord Selkirk; but he had left that place before its arrival, and had proceeded into the interior with the view of re-establishing the Red River Settlement. It is evident that the warrant could only be legally executed within the Western district (of Upper Canada), but, although Lord Selkirk had left that province, the writ was dispatched after him, in order that an attempt might be made to arrest him at any place where it might reach him. To get Lord Selkirk into their hands, dead or alive, is obviously the principal aim of the North-West Company throughout the whole of these transactions. The attainment of that object would not only tend to insure to them the destruction of the Red River Settlement, but effect the concealment of their own atrocity; and, it must be confessed that the magistrates who have generally granted, and the constables who have been appointed to execute, the warrants alluded to, appear to have been well calculated to perform the expected service. Your Lordship cannot fail to be surprised,—if, indeed, any thing planned by the

North-West Company can be an object of surprise, when I inform you, that the Jean Baptiste Blondin, who appears upon the face of the last-mentioned writ as the special bailiff appointed to arrest Lord Selkirk, was recently obliged to find security, before the police magistrate at Montreal, to keep the peace; information having been given upon oath, that, among other threats, he had been heard to declare that Lord Selkirk "ne seroit jamais tué par d'autres mains que les siens." When taken before the magistrate, he did not deny having used the expressions charged against him. He was accordingly obliged to find £100 security to keep the peace. Of course one of the North-West Company (a person of the name of Thain) became his surety; and, if the recognizance should happen to be forfeited, the partnership will doubtless act with more liberality, than suffer Mr. Thain to lose by the payment of the penalty. I think I am, therefore, justified in saying, that this third warrant, obtained by the North-West Company, equals in its disgraceful character the two former ones; and it is probably the first instance, in a British colony, of a person being appointed to act as a special constable for the purpose of taking into his custody one whom he had threatened to murder; and, in consequence of which threat, it had been found necessary for the police to bind him over to keep the peace!

It is therefore sincerely to be hoped, should an attempt be made to serve this new writ upon Lord Selkirk, that he will treat it as he did the former ones; for, exclusive of the illegality of such service

beyond the district specified in the warrant, there appears no reason to suppose that Blondin, the bailiff specially appointed by the writ to seize Lord Selkirk, would be disposed to act less zealously in the cause of his employers, than their clerk, Serjeant de Reinhard;—who was selected, by a magistrate of the North-West Company, as special constable, for the purpose of arresting Mr. Keveney in the name of the King; and whom, after his arrest, and while under his charge, he murdered in the name of the Company.

I have thought it advisable to submit to your Lordship the fact of this renewed attempt to apprehend Lord Selkirk on a charge of felony, in order that His Majesty's Government—should it subsequently appear that he has refused obedience to the warrant—may be aware of the circumstances attending it.

I have the honour to be,

My Lord,

Your Lordship's obedient

And humble Servant,

J. HALKETT.

Earl Bathurst,

&c. &c. &c.

Seymour Place, January 3, 1818.

MY LORD,

I take the liberty of again addressing your Lordship on the subject of the British Colonists at the Red River, in consequence of intelligence recently received from that quarter. The last ac-

counts from the interior of North America communicate the satisfactory information that Lord Selkirk has succeeded in re-establishing the settlers upon the lands from which they had been twice driven by the North-West Company of Montreal.

Having left Fort William as early in the last summer as the state of the river navigation would admit, Lord Selkirk proceeded into the interior, and arrived at the Red River in the month of June. In the preceding winter he had taken measures to enable a small party of the settlers, who had been driven away in the summer before, to return in safety to the Settlement; and, upon his arrival there, he found that they had again begun to re-establish themselves, and to cultivate the lands which had been assigned to them. Under the circumstances in which they were placed, their agricultural operations were, of course, much circumscribed; and the horses of the Settlement having been carried away, or destroyed, by their opponents, they were prevented from putting so much land into tillage as they otherwise would have done. They had sowed, however, above sixty acres of grain. The crops of the former year had been destroyed by the persons employed by the North-West Company, who, after Mr. Semple and twenty of his people were killed,—the surviving settlers driven away,—and their habitations reduced to ashes—turned their horses loose into the fields of wheat, and other grain, for the purpose of laying them waste. The malicious satisfaction which the Company's adherents felt in thus destroying the promising crops of the Settlement, was, however,

somewhat damped by the circumstance of nearly fifty of their horses having died in consequence of the surfeit. The European cattle and sheep, which had been sent to the Settlement, as a breed, were also destroyed by the persons employed by the North-West Company, whose brutality, throughout the whole of these transactions, was such as scarcely to be credited.

A few days after the 19th of June, the day when Mr. Semple and his followers were put to death without quarter by their opponents, Mr. Archibald Norman M'Leod the magistrate, one of the Company's principal agents, together with several of his partners, accompanied by a considerable number of the half-breeds who had been engaged in the slaughter of the 19th, rode to the spot, and, having assured these half-breeds that they had done well, the party, with loud shouts and laughter, began to exult over, and even to kick the dead bodies which had remained upon the ground. On the side of the North-West Company, only one person, a half-breed, had fallen. His body was buried, and a paling placed round his grave; but the bodies of the settlers, (with the exception of a few who had been brought away and interred by some native Indians), were all left unburied on the spot, and were afterwards devoured by dogs. In the following spring their bones were collected, and interred by Captain D'Orsonnens, who, at Lord Selkirk's request, had proceeded to the Red River with a party of the new colonists in the preceding winter.

Shortly after Lord Selkirk had arrived at the Settlement, he was joined by a large portion of the

remaining settlers who had been driven away in the summer before. Contrary to the expectations of the North-West Company (who had exulted in the idea that these colonists must have been all compelled to go back to Hudson's Bay for the purpose of returning to Europe), they had passed the autumn and winter towards the north end of Lake Winnipic, and at the Saskatchewan. Having heard that Lord Selkirk had arrived in North America, and was proceeding into the interior, they trusted that now they would not be entirely forsaken, and that means would be found to enable them to return with safety to the Red River.

By the latest accounts from that place it appears, that these settlers, together with the new ones who had recently arrived from Canada, including the discharged men of the De Meuron and Watteville regiments), were establishing themselves, with every reasonable prospect of success. During their route, they had invariably experienced the friendly offices of the Indian population; and the native tribes in the immediate neighbourhood of the Red River, have formally and solemnly declared their intention to support them. With respect to the miserable race termed Metifs, Half-breeds, or Bois-brûlés, a band neither in the slightest degree formidable from their numbers, nor their courage, even a large portion of these have now declared that they mean to support the Red River Colony. It cannot, indeed, be expected that such banditti are to be trusted, while within the sphere of the influence and bribes of those who originally hired them to commit acts of

aggression against the colony, and afterwards remunerated them for their hostility. But if the North-West Company, by whom they were so employed, can be restrained, by the interference of Government, from again instigating these ignorant and deluded people to renew the outrages against their fellow-subjects, there can be no doubt of the Settlement remaining henceforward secure and undisturbed. Without some adequate interference, however, it can scarcely be expected that the Company's partners in the interior, will be induced to relinquish their endeavours to cause its final destruction. Their rancour towards the colony has, in all probability, increased in proportion to their disappointment, in being twice baffled in their hopes to effect a permanent dispersion of the colonists.

A sufficiency of documents, I should suppose, has been submitted to your Lordship in the course of the last two or three years, fully to satisfy His Majesty's Government, that, from the commencement of the Red River Colony, there existed, on the part of the North-West Company, a determined resolution to destroy it. If that fact be admitted,—and I do not hesitate in asserting, that it is impossible for any person who will investigate the matter with attention, to entertain the slightest doubt on the subject,—every thing which ensued must appear a natural consequence of such determination. If the Company, in following up their resolution, happened not to succeed in their attempts to destroy the Settlement in one way, they were ready to try it in another. They began by

endeavouring to instigate the native Indians against the colonists; but in this they completely failed. Their next proceeding—in addition to bribing and seducing a considerable portion of the settlers to desert from the colony, and break their contracts—was to hire, arm, and array their half-breed dependents, and make them, under the personal direction of partners and clerks of the Company, attack the colonists, burn their houses, and drive them by force from the Settlement. And, at the very time they were planning and executing these measures, their agents and principal partners were addressing memorials to Government, in which they boasted of their humanity and kindness towards these people, whom they were thus shamefully oppressing.

I beg leave, as bearing upon this subject, to inclose for your Lordship's perusal, one of the documents recently received from Montreal*. It is the copy of a letter addressed, in the year 1812, by Mr. Simon M'Gillivray, one of the London agents of the Company, to the wintering partners then at Fort William. By this document it evidently appears, that, even at that early period, the principal manager of the Company's concerns had determined "to drive," as they expressed it, "Lord Selkirk to abandon his scheme of colonization in the interior of North America;" and it is a matter well worthy of your Lordship's observation, that, even by Mr. M'Gillivray's own testimony it is evident, that this determination of the North-West Company existed long before that tran-

* See Appendix [E].

saction occurred, which they subsequently took such pains to make Government believe to be the primary cause of any opposition shewn towards the colonists by persons connected with, or employed by, the Canadian fur traders,—I mean, the Proclamation issued by Mr. Miles Macdonell, in the year 1814, and his preventing the provisions from being then carried out of the district over which he had the command. So that, if the statements of these agents are to be credited, the original cause of their objection to the Settlement, did not arise till two years after they had actually determined to destroy it!

I earnestly request your Lordship to compare this letter of Mr. M'Gillivray to the wintering partners, with that which he officially addressed to your Lordship from Montreal, on the 19th of June, 1815. It is impossible, I conceive, to peruse these two letters without being at once convinced that it was the studied intention of the writer to deceive, and that he even did not scruple to obtrude his attempts at deception into that high Department of State over which your Lordship presides. In the letter which he addressed to your Lordship, he assumed, and with considerable art, a high and spirited tone, spurning, with indignation, the idea of the North-West Company being thought capable of instigating acts of violence and aggression against their fellow-subjects, and solemnly and indignantly denying, for himself and his partners, the truth of the charges brought against them:—"I trust," he adds, "that your Lordship will pardon the freedom with which, upon this occasion, I have ventured to express myself."

"Imputations, such as those which the Earl of Sel-
 "kirk attempts to fasten upon the North-West Com-
 "pany, cannot but rouse the indignant feelings
 "of any honourable man; and it is impossible to
 "reply to such calumnious accusations in mode-
 "rate terms."—But it is worthy of remark that, at
 the very period when the writer was thus endeavour-
 ing to impress upon your Lordship's mind, the utter
 impossibility of the partners of the Company planning
 those acts of aggression which Lord Selkirk had
 anticipated, they, and their servants, were actually
 employed in committing them! About a week
 before he wrote that Letter to your Lordship, the
 clerks, servants, and dependents of the Company,
 under the express orders of one of their partners, had
 made an unprovoked attack with fire-arms upon the
 settlers, in consequence of which one of them was
 mortally, and several of them severely wounded;
 and, only three days after the date of the same letter,
 these people, headed by another of the Company's
 partners, again renewed the attack, fired upon the
 colonists, and succeeded, a few days afterwards, in
 driving them away from the Settlement.

In defence of Mr. M'Gillivray, it may, perhaps, be
 said that, at the time he thus addressed your Lordship,
 he might have been ignorant of the plans devised by
 the Company against the settlers,—that their machi-
 nations in the interior might not have been commu-
 nicated to him,—in short, that, although he had
 officiated upwards of three years as one of the most
 active, and confidential agents of the North-West
 Company, he had been kept in total darkness with

respect to their intentions, projects, conduct, and character. This plea of ignorance, however, and it appears the only one which for a moment could be urged in his favour,—will surely not be allowed by any person who peruses his letter of 1812 to the wintering partners. But, were it even admitted that, when he addressed his letter to your Lordship, he had no intention of deceiving Government, how can the sentiments which he expressed in that communication be reconciled with his conduct a few weeks after the date of it? In that short space of time we find Mr. M'Gillivray transported to Lake Superior, and presiding among a large body of the wintering, and other partners, assembled at their yearly rendezvous at Fort William. It was to that meeting that the settlers, who had been seduced from the Red River, were brought down in the canoes, and at the expense, of the North-West Company. The accounts with these colonists were there settled, and the bribes were there paid to those of them who had been most zealous in the service of the Company,—that is to say, to those who had been the most active in plundering the property, burning the houses, and shedding the blood of their fellow-settlers: and the two partners of the Company, Mr. Duncan Cameron, and Alexander M'Donell, who had been personally engaged in these very aggressions, were themselves present at the meeting. Is it possible to suppose that Mr. Simon M'Gillivray, an agent of the Company, in daily and hourly communication with his partners, then at Fort William, could remain ignorant of the transactions which had occurred at

Red River, or of the means which the Company had adopted to seduce from the Colony one portion of the settlers, and to drive away the other? No person, however credulous, will, for a moment, believe it.

Even admitting, therefore, that Mr. M'Gillivray, when he went to Fort William, was ignorant of what had been planned and executed against the colony, he must, after his arrival, have quickly discovered that the charges alleged by Lord Selkirk were not the "calumnious accusations" at which, by his letter to your Lordship, he appeared to be so indignant. Upon such discovery it was surely his duty, without delay, to have again addressed His Majesty's Government, for the purpose of undeceiving them,—to have candidly acknowledged his mistake,—and disclaimed the slightest participation, or approval, of those unwarrantable measures adopted by the Company, for the purpose of driving Lord Selkirk to abandon his plans of colonization in British North America. He ought to have gone further:—he ought to have done every thing in his power to put a stop to those violent proceedings of his partners, and used his whole influence to prevent the continuation of that system of aggression, which was but too soon resumed with such aggravated outrage; and, if he despaired of success in that attempt, he should have refused to act any longer as an agent to the Company. Instead, however, of taking such steps,—which surely would have been no more than acting consistently with those honourable sentiments expressed in his Letter to your Lordship,—Mr.

Simon M'Gillivray appears to have been much more disposed to establish what, in his address to his wintering partners, he, with gravity and self-complacence, styles, "his family claim to the feelings and opinions " of a North-Wester." Accordingly, we find him immediately proceeding to make good that hereditary claim, by giving special directions (as mentioned in my letter to your Lordship of the 23d of August last) to several of his partners then employed in taking examinations of some of those colonists who had been seduced, and brought down to Fort William; suggesting to them the expediency of at once getting at something which might criminate, or throw blame upon Lord Selkirk; and advising them to discover some of the settlers who *could or would swear* to circumstances which might have that effect.

It is certainly a matter to be deeply lamented, that any degree of credit or confidence should have been placed in such men,—and that the Provincial Government of Canada, when Lord Selkirk first stated his grounds of suspicion with respect to the conspiracy against the Red River colony, should have paid so little attention to his statements. Had as much credit been, at that time, given by the Canadian Government to the assertions of the Earl of Selkirk, supported by evidence, as was fatally reposed in those of the North-West Company without it, or, had any adequate inquiry upon the spot taken place at the period alluded to, those disgraceful and sanguinary acts, which have since been committed at the Red River, would never have occurred. As the colonists, how-

ever, have again returned to the Settlement, it is earnestly to be hoped that Government will take every means, which it can command, to support them in the peaceable occupation of their land, and to protect them from further oppression.

I have the honour to be,

My Lord,

Your Lordship's obedient

And humble Servant,

Earl Bathurst,

J. HALKETT.

&c. &c. &c.

Seymour Place, February 21st, 1818.

MY LORD,

In consequence of information recently received from Canada, I beg leave to revert to the subject of Mr. Goulburn's letter to me of September last.

Mr. Goulburn mentioned, that your Lordship had great satisfaction in finding Lord Selkirk to have stated, that "the appointment of the Commissioners," and "the placing that important charge in such respectable hands, had afforded a satisfaction and relief to his mind, greater than he could well express; and that whatever measures these gentlemen might adopt for restoring tranquillity, would meet with every support which it was in his power to afford."

In the letter which I addressed to your Lordship on the 29th of the same month, I observed, that it appeared very natural for Lord Selkirk, in the situation in which he was placed, to feel much satisfaction at

the appointment of the commission alluded to, as being a measure calculated to check the outrages committed by the North-West Company against his Settlement. At the same time I confess it appeared somewhat remarkable that he should, in any communication, have expressed his intention so decidedly of assisting the Commissioners, by every means in his power, before he could have an opportunity of knowing how they were likely to act. This impression, however, was, at once removed by a perusal of the official letter written to Lord Selkirk, in October 1816, by the Governor of Canada, the reply to which contained the passage cited to me by Mr. Goulburn, as above mentioned. Had I known of Sir John Sherbrooke's letter, when I addressed your Lordship on the subject, I should certainly, in fairness towards Lord Selkirk, have then noticed it, in order to account for the expressions which were conveyed in the answer. — In fact, the reply could not properly be judged of without seeing the communication which produced it. Under this impression, I take the liberty of subjoining a copy of the letter alluded to, which I only received a few days ago.

“ Quebec, 30th Oct. 1816.

“ MY LORD,

“ With reference to the latter part of your Lordship's letter of the 3rd of September, in which you expressed a strong desire, that a Commissioner might be sent up to Fort William and the Indian territories, on the part of Government, to quiet the existing disturbances, I have much pleasure in acquainting your Lordship that I have been enabled to meet your wishes in this respect by the appointment of the Honourable W. B. Collman, a

" member of the Executive Council of this Province, and
 " John Fletcher, Esq. one of the principal Magistrates of
 " Police here, to be Magistrates for the Indian territory, and
 " Commissioners of Special Inquiry, with full powers and
 " instructions in each capacity.

" Entitled as these gentlemen are by their talents, integrity, and impartiality, to the fullest confidence in all
 " that they shall do, I have no doubt, that they will receive your Lordship's entire support in the measures they
 " shall adopt for the restoration of tranquillity in that
 " disturbed country."

" I have the honour to be,

" My Lord,

" Your Lordship's most obedient

" humble Servant,

(Signed) " J. C. SHERBROOKE."

" Earl of Selkirk."

When the Governor of Canada thus assured Lord Selkirk that the Commissioners whom he had appointed were entitled, from their talents, integrity, and impartiality, to the fullest confidence in all that they should do, it could scarcely be expected that Lord Selkirk would reply to that part of Sir John Sherbrooke's letter in terms less unqualified than those which he adopted.

It further appears by Sir John Sherbrooke's letter, —and it is most important and satisfactory to observe it,—that Lord Selkirk had himself originally applied to the Governor of Canada for a special commission of inquiry on the part of Government.

With respect, however, to the line of conduct pursued by those who were named in the commission,

some important documents will soon be laid before His Majesty's Government, which will but too clearly shew, that, notwithstanding the care and anxiety of the Provincial Government of Canada to select persons in every respect qualified for so important a charge, Sir John Sherbrooke, as well as Lord Selkirk, will have but too much reason to feel disappointed at the selection which took place: and a similar disappointment cannot fail to extend to the Government at home, who, in their Proclamation issued at Quebec in May last, confirmed the nomination of Mr. Coltman and Mr. Fletcher as the Commissioners.

On the subject of that Proclamation I took the liberty of addressing your Lordship on the 18th of July last, and stated, that the directions which it conveyed, with respect to the discharged soldiers, had not been, and, indeed, could not, on any just ground, have been carried into effect. These men had entered into lawful contracts to settle at the Red River, and many of them have since taken regular allotments of land for cultivation. With respect to every other part of the Proclamation, it will be found, that Lord Selkirk, (under a protest, however, with regard to his right, in point of law, to certain property given up by him to the Commissioners), has paid a faithful obedience to its directions.

But although Lord Selkirk evinced the most respectful deference to the Proclamation, the North-West Company turned the whole measure into an instrument for promoting their own special views and

advantage. Before the Commission of Inquiry reached the interior, some partners of that Company had, with their usual activity, got the start of the Commissioners. Having procured printed copies of the Proclamation, they carefully distributed them wherever the circulation could serve their purpose. They gave out, that Government had issued that document at their sole request, and for their exclusive benefit; and, while the commission was moving slowly forward to the Red River, where the most important evidence respecting the late outrages was to be looked for, the North-West Company were actively employed in the interior increasing their store of plunder, instead of attending to the order of restitution enjoined by the Proclamation.

One of the very first steps, also, which was adopted by Mr. Coltman the Commissioner, after his arrival at the Red River, was such as could not fail to induce those who were guilty of the atrocities complained of, to believe that their offences would, after all, be looked upon as not very deserving of punishment. Although the Proclamation had publicly denounced, in language of well-merited reprobation, the crimes which had been perpetrated, the Commissioner officially promulgated his opinion, that these offences, as far as related to the past commission of them, appeared to him to be of a very venial description. The crimes committed at the Red River, and in the countries adjoining, were flagrant and notorious. Mr. Coltman ought to have been fully aware of their nature and magnitude. Prior to his departure from Montreal, bills of indictment had been

found by the Grand Jury against partners, clerks, servants, and adherents of the North-West Company, for crimes, such as *murder, maliciously shooting, assault, robbery, theft, and arson*. Yet we find Mr. Coltman officially issuing, upon the spot, a circular, addressed to the various parties referred to in the Proclamation, which concludes with the following extraordinary observations :—

“The Proclamation, however ordered, as it is understood to be, with the advice of the most eminent lawyers in England, under a full view of all the circumstances of the case, appears to treat these violences rather as acts of private war or hostility, than as robberies, felonies, or murders, in the usual acceptance of these words, and it is fairly to be presumed that judges and juries will hereafter be inclined to look upon them in a similar view. In general therefore, it appears to me, that those of your colleagues who may have been respectively led into a participation in those acts of violence, may look for a considerable share of lenity in the judgment to be exercised on the past offences of all who have not participated in deliberate murder, or been the primary causes or instigators of the offences at large, provided they and their colleagues yield a cheerful and unreserved obedience to the orders of their Sovereign for the future.

“On the other hand those who shall be backward in so doing will expose themselves to the severest censure, and the retention of property, especially, which shall be known to either party to belong to the other, now that the illegality of the original seizure is publicly declared, will expose any one so knowingly offending to the odious and disgraceful charges of robbery and felony, which, by the terms of the Proclamation, do not appear originally to have been thought applicable to them, and may further,

"in my conception, by shewing an original felonious intention, still render the parties liable to conviction and legal punishment for those offences."

"I have the honour to remain,

"Gentlemen, &c. &c. &c."

(Signed) "W. B. COLTMAN."

It would be superfluous to animadvert upon the opinions thus officially circulated by Mr. Coltmán. When we find an acting magistrate, whom it was thought advisable to invest with unusual powers for the preservation of the peace, thus labouring to soften down the crimes denounced by the Proclamation, into a something, which he curiously denominates "private war," it would be idle to make any further remark upon the subject. Nor should I have thought it at all necessary to notice such a production, had it not been for the evil tendency which it must unavoidably occasion in retarding, instead of advancing, the administration of justice in a country already sufficiently lawless.

I have also again to request your Lordship's attention to the subject of those various warrants issued in Upper Canada, for the apprehension of Lord Selkirk, and the gentlemen who accompanied him in North America. It appears the more necessary, briefly to revert to them, because it has been asserted, that one of the principal reasons assigned by His Majesty's Government for issuing the Proclamation at all, was, that Lord Selkirk had effected what has been called a resistance to legal process, or, as it is

termed in the Proclamation, a rescue "from lawful arrest and custody."

I noticed to your Lordship the grounds upon which these arrests had been issued, namely, upon depositions (notoriously false) of certain clerks of the North-West Company. Two of these men, Vandersluys and M'Tavish, had solemnly sworn, that Lord Selkirk feloniously stole, and carried away eighty-three fusils, the property of their masters. These fusils, as your Lordship would observe from the evidence produced to you, had been lawfully seized and secured, in consequence of a search-warrant issued by Lord Selkirk, as a magistrate, upon information laid before him, that they had been removed, and secreted the night before, for some illegal and felonious purpose. The search was accordingly made, the arms were found fresh loaded and concealed, and, having been seized by those to whom the search-warrant was entrusted, they were again safely deposited in the place from whence they had been surreptitiously removed the night before. That they were so removed with the knowledge, sanction, and assistance of the two managing clerks themselves (Vandersluys and M'Tavish), who subsequently swore to the felony, there cannot exist a doubt. But this is not all;—for these two men, when they thus swore that the arms had been feloniously, knew that they had been lawfully seized. The search-warrant had been previously exhibited to them at Fort William, and they are therefore liable to be indicted, and I have no doubt will be indicted, for a conspiracy to charge Lord

Selkirk and the other gentlemen named in the warrant, with the commission of a capital offence, which the deponents knew had not been committed.

I request your Lordship, on this subject, to peruse the accompanying examination of Mr. M^cNab, which was taken some time ago before a bench of magistrates at Sandwich, in Upper Canada*. He was one of those named in the warrant issued in consequence of the information upon oath of Vandersluys and M^cTavish, — a copy of which document I transmitted with my letter to your Lordship of the 10th of July last.

In the letter, which I had the honour of addressing to you on the 29th of September, I mentioned that one of the numerous writs obtained by the North-West Company, for the purpose of apprehending Lord Selkirk, had been sent after him (as I understood) subsequent to his departure from Fort William in May last; and I added, that, if it was attempted to be served upon him beyond the limits of Upper Canada, it was earnestly to be hoped that he would resist its execution. I had no hesitation in so stating the matter, because, in the first place, the warrant in that case (whether founded on perjury or not) would be illegal; and, in the second place, if Lord Selkirk had submitted to the arrest, he would have stood a good chance of being put to death by the constable. I now find that I was correct in my assertion, as to the invalidity of the warrant; and it is also satisfactory to know, that Lord Selkirk refused to obey it. A person of the name of Smith, styling

* See Appendix [F.]

himself "deputy sheriff," in a country where he had no jurisdiction, was employed by the North-West Company to pursue Lord Selkirk to the Red River, to which place his Lordship had proceeded for the purpose of re-establishing his Settlement. Instead, however, of executing his warrant, Smith was himself very properly taken into custody as a disturber of the peace, and was subsequently bound over, (by Mr. Coltman the Commissioner,) in security for his peaceable behaviour.

Being thus baulked in his endeavours to serve his employers, he was shortly afterwards prevailed upon to appoint (though he had no right so to do) a "sub-deputy sheriff." He accordingly selected a Metif, or Indian of the half-breed, named Campbell, into whose hands he put a new warrant of his own making. Every thing being now prepared, Mr. Deputy Sheriff,—himself under articles to keep the peace,—dispatches Mr. Sub-Deputy to break it. Campbell is accordingly conveyed to the Red River by Mr. M'Kenzie, an agent and partner of the North-West Company. When he arrived at the Settlement, he seems to have been rather shy in commencing the performance of his expected duty. He was assured, indeed, in the presence of Mr. Coltman the Commissioner, that the warrant which had been given to him was invalid,—that if he attempted to execute it, he would be guilty of a breach of the peace, and should, in consequence, be immediately apprehended. This admonition had for some time a wholesome effect; but being subsequently goaded on by two of the North-West Company's partners, then upon

the spot, he mustered courage enough, some days afterwards, to enter forcibly into the house occupied by Lord Selkirk, and attempted to arrest him. The consequence was, that the Sub-Deputy shared the same fate with the Deputy-Sheriff, and was immediately compelled by the Commissioner to find securities (from two of the North-West Company then present,) in the amount of £500 for his good behaviour.—Such is the nature and real character of those cases of resistance to legal process, and rescue from lawful arrest, with which Lord Selkirk, and the gentlemen who accompanied him into the interior of North America, appear to have been so harshly and prematurely charged by His Majesty's Government.

But it would seem, that Government has not stopped here: for it is positively stated, that orders were some time ago sent out from this country to institute criminal proceedings, on the part of the Crown, against Lord Selkirk, in Upper Canada. It is upon no vague rumour that I state this report; and I will pledge myself to shew, if it should be deemed necessary so to do, that the Attorney-General of the Upper Province has himself avowed, that

he had received official instructions from Government at home, to institute such prosecution.

I must confess, that there appears something so unusual, and so unaccountable, in the measure thus stated to have been directed, that it is not an easy matter to give it implicit belief. But if the assertion remains uncontradicted, I presume it may not unreasonably be looked upon as well founded; and I conceive that I am making no improper re-

quest in asking information from your Lordship on the subject. Those who are connected with Lord Selkirk—and who, from an intimate knowledge of his character and worth, are deeply interested in what concerns him—feel themselves to be fairly entitled, in his absence, to inquire, of those who are in power, what steps they are taking with respect to him. There surely can exist no good grounds for secrecy on such a subject. Were Lord Selkirk in England, he would have a right to demand, as he most assuredly would demand, to know if any, and what, directions had been issued by Government to have him prosecuted as a criminal—to know what charges of felony were previously brought against him—and who the persons were who so accused him. He would have a right to expect either that vague and undefined assertions relative to his alleged delinquency should be openly done away, or that he should, at once, be fairly and legally put upon his trial. But if Government have thus ordered criminal proceedings to be instituted against him in Canada, the very knowledge of such an order having been issued, (and it was not likely to be long concealed,) must necessarily have created a strong and unfair impression against him in the Colony where he was so directed to be tried. If any such interference has taken place on the part of the Executive Government, it was surely not only unconstitutional in its principle, but obviously unjust to the parties accused. The law should have been allowed to take its course. The North-West Company, by whom all the machinery of illegal warrants, false affidavits, and perjured depo-

ments, had been put in motion, ought to have been permitted to go on with their prosecutions in their own way. The result would infallibly have convinced His Majesty's Government, that, when the whole matter was ready to come before a jury, when the persons accused were prepared to meet the charge, and when the public was, at length, to be enabled to ascertain the real state of the case by the production of evidence in a court of justice, the North-West Company would have been too prudent not to abandon the prosecutions. But if Government, misled by the false, but artful, information laid before them, have ordered criminal prosecutions in Canada to be instituted on the part of the Crown, before it was ascertained that crimes had been committed, the result must evidently tend to the prejudice of the parties accused, and to prevent an unbiassed and impartial inquiry. And I must beg leave further to remark, that although it was stated (in Mr. Goulburn's letter to me, of September last) that your Lordship was aware of the objections which might be taken to the decisions of the Courts of Canada with respect to the disputes which had occurred, and had, in consequence, done every thing in your power to facilitate the trials of the questions in this country, yet, as far as Lord Selkirk's case was to be attended to, it would appear, that these objections were to be deemed of every secondary importance, and that the Attorney-General of the province was to be ordered to prosecute him in a Canadian Court. Whether Lord Selkirk, as a Peer,

can be legally tried for felony in a British colony; I know not. The case, I believe, is a novel one.

But, even allowing the existence of those objections to the Provincial Courts alluded to by your Lordship, I should suppose, that with respect to the singular charge, *and the only charge*, of felony, which the North-West Company have had the effrontery to bring against him, it must be of very little consequence to Lord Selkirk, on his personal account, whether he is to be tried—for feloniously stealing and carrying away eighty-three fusils,—by a jury in Canada, or by his Peers in England.

Lord Selkirk has now, of his own accord, proceeded to Upper Canada to meet this, or any other charge, which either the Crown Lawyers of the province, or the North-West Company, may think fit to bring against him; and as he has been strongly urged by those most interested in his welfare in this country, to repair as soon as he possibly can to England, I trust that he will be thereby soon enabled to remove those unjust prejudices which have been but too successfully raised up against him,—and to procure, in some shape or other, that justice which appears to have been hitherto so difficult to obtain.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

Edw. Bathurst,

J. HALKETT.

&c. &c. &c.

Downing Street, 7th March, 1818.

SIR, I am directed by Earl Bathurst to acknowledge the receipt of your letter of the 21st ultimo, entering into a detail relative to the proceedings of the Commissioners appointed for the investigation of the outrages stated to have been committed by the agents of the Hudson's Bay and North-West Companies in the Indian territories, and to acquaint you, that although Lord Bathurst will always consider it to be his duty to receive all the information which may be tendered to him, regarding the late unhappy differences subsisting between the North-West Company, on the one hand, and the Hudson's Bay Company and Lord Selkirk, on the other, yet he cannot admit that any individual (however respectable) is authorised to call upon him to enter into explanations of the measures adopted by His Majesty's Government, with the view of restoring, if possible, a good understanding between the contending parties.

I am, Sir, your obedient Servant,

J. Halkett, Esq.

H. GOULBURN.

Scymour Place, March 10th, 1818.

MY LORD,

I have to acknowledge the receipt of Mr. Goulburn's letter in answer to that which I had the

honour of addressing your Lordship on the 21st of last month, and although I did not wish to intrude with any further observations on the subject of my last communication, I feel it necessary to defend myself against the charge, implied in Mr. Goulburn's letter, of having been improperly calling upon your Lordship to enter into explanations of the measures stated to have been adopted by His Majesty's Government, with the view of restoring, if possible, a good understanding between the contending parties.

In the letters which I have taken the liberty of addressing to His Majesty's Government upon these unpleasant topics, my object has been to give—not to ask for—explanations;—and I think the only instance which can be pointed out, in which I have requested from your Lordship any information at all, was—not with respect to what measures Government might, or might not, think proper to adopt for the purpose of restoring what is termed a good understanding between contending parties,—but to ascertain whether a report prevalent in Canada, that Government had ordered Lord Selkirk to be prosecuted as a felon, was true or false.—This request for information on my part, ought not, in justice, to be confounded with any improper or unauthorised demand upon your Lordship, as Secretary of State, to enter into explanations with an individual, on the subject of measures adopted by His Majesty's Government, with respect to the contentions alluded to. In fact, I only requested, in Lord Selkirk's absence, what, if present, he would, I conceive, have had a

right to demand, — namely, to be informed whether the Executive Government had ordered a criminal prosecution to be instituted against him; and, if so, for what crime, and upon whose accusation.

The report alluded to was not a vague and idle one. The Attorney-General of the province had himself declared, that he had received instructions to prosecute; and although no apprehension can, in the slightest degree, be entertained by any friend of Lord Selkirk, with respect to the ultimate result of these criminal proceedings (if they are persisted in), yet the very conviction which prevails in Canada, that Government had sent out the instructions alluded to, must have widely and rapidly augmented the hostility and prejudice which had already been so industriously stirred up against him in that country. An uncontradicted rumour circulated throughout the Canadas, that His Majesty's Ministers considered Lord Selkirk to be guilty, and had, in consequence, directed him to be criminally prosecuted, could not fail to add to the injustice of that stigma which had been cast upon him by some of those premature allegations conveyed in their Proclamation of the 3rd of May.

If, on the other hand, there existed no good ground for the report, that instructions had been sent out to prosecute Lord Selkirk, and your Lordship had directed that I should be apprised of my error in having supposed it could be true, I should have taken every means in my power to contradict it in this country, and to counteract, (by transmitting to Canada the real

state of the case), the injurious and unfounded impression which the rumour had occasioned.

I have the honour to be,

My Lord,

Your Lordship's obedient

and humble Servant,

Earl Bathurst,

J. HALKETT.

&c. &c. &c.

Seymour Place, 30th Jan. 1819.

MY LORD,

It was not my intention to have again addressed your Lordship upon Lord Selkirk's affairs, or to have tendered any further information on the subject of those letters and documents, which, during the last two years, I have had the honour of transmitting to you. But the system of oppression and injustice in Canada, of which Lord Selkirk has had such good reason to complain, has increased to so great a pitch, that I must take leave once more to submit the subject to your Lordship's serious attention. From documents which Lord Selkirk has put into my hands, I am enabled to bring down the narrative to a period considerably later than that to which I had already submitted the circumstances to the Colonial Department. I should now have left to Lord Selkirk himself, the task of continuing these remonstrances; but his recent ill-health, and the multiplicity of business which has pressed upon him since his return from America, have hitherto

prevented him from paying that attention to this subject which its importance demands—whether viewed with respect to the preservation of private rights, or the promotion of public justice.

In my letter to your Lordship, of the 21st of February last, I mentioned that Lord Selkirk had, at that time, voluntarily repaired to Upper Canada, to meet any charges which the Crown Lawyers in that province, or the North-West Company of Montreal, might have thought fit to bring against him. The nature of those charges, and the unjustifiable measures to which they have given rise, both in Upper and Lower Canada, shall now be laid before you. In submitting them to your Lordship's attention, and in adverting, as I must unavoidably do, to numerous other judicial proceedings, I am fully aware that I shall be led into a detail of no inconsiderable length. The circumstances, however, attending them appear much too important to be transiently noticed;—and nothing short of a full, and comprehensive statement, can enable your Lordship to judge of them clearly and distinctly.

Before, however, I enter into this necessary detail, I must take leave to recal your Lordship's recollection to what I stated, in my letter above referred to, on the subject of a report then current in Canada, that orders had been sent out to that colony, to have Lord Selkirk criminally indicted. At that time, I took the liberty of mentioning, that, if such were the case, it was a most improper interference on the part of the Executive Govern-

ment, to direct an individual to be prosecuted for a crime, without having good ground to be satisfied that any crime at all had been committed. The report to which I then alluded has, however, been too well corroborated; and I must take this opportunity of stating the circumstances attending such corroboration, because it is not improbable, that they have been much misrepresented to His Majesty's Government.

During the last March Term at Montreal, Mr. Uniacke, the Attorney-General of Lower Canada, in giving some papers to Lord Selkirk, delivered among them, by mistake, one in the hand-writing of Mr. Pyke, the Advocate-General of Quebec, who had been appointed as legal adviser to assist Mr. Coltman the Commissioner of Special Inquiry. The paper,—of which the following is an accurate copy,—bore all the marks of having been written by Mr. Pyke in great haste:—

“ I am fully sensible of the danger which may, in the
 “ interim, result to the commercial and political interests
 “ of Great Britain, from the opening which the conduct of
 “ Lord Selkirk appears calculated to give to the admission
 “ of foreign influence over the Indian territories, to the
 “ exclusion of that heretofore exercised by the subjects of
 “ Great Britain, and for* the necessity of putting an
 “ end to a system of lawless violence, which has too long
 “ prevailed in the Indian territory, and the more distant

* Supposed “ of ”

" parts of Upper Canada. By resistance to the execution
 " of the warrants issued against him, Lord Selkirk has ren-
 " dered himself doubly amenable to the laws; and it is
 " necessary, both for the sake of general principle, for the
 " remedy of existing, as well as for the prosecution
 " of farther evils, that the determination of the Government
 " to enforce the law with respect to all, and more particu-
 " larly with respect to Lord Selkirk, should be effectually
 " and speedily evinced. You will therefore, without delay,
 " on the receipt of this instruction, take care that an indict-
 " ment be preferred against his Lordship, for the rescue of
 " himself, detailed in the affidavit of Robert Mc Robb; and,
 " upon a true bill being found against him, you will take
 " the necessary measures in such cases for arresting his
 " Lordship, and bring him before the Court from which
 " the process issued.

" As it appears not improbable that Lord Selkirk may,
 " previous to the issue of process against him, have removed
 " from Upper Canada into the territories claimed by the
 " Hudson's Bay Company, it will be necessary, in order, in
 " such case, to give validity to the warrant against him,
 " that it should be issued, or backed by some Magistrate
 " appointed under the Act of the 43rd of the King, to act
 " both for Upper Canada and for the Indian territory. By
 " this means the warrant will have, under the provisions of
 " the Act of Parliament, a legal operation, not only in Upper
 " Canada, but in any Indian territories, or in any other
 " parts of America (without excepting the territories of
 " the Hudson's Bay Company), which are not within the
 " limits of either of the Provinces of Canada, or of any civil
 " government of the United States, and you will see the im-
 " portance of not permitting its execution to be defeated by

* Supposed "prevention."

" any irregularity in the warrant itself, or by any change of
 " place on the part of Lord Selkirk. - A Captain Matthey
 " appears to have been equally concerned in the rescue of
 " Lord Selkirk ; you will take, with respect to him, the
 " same measures which you are hereby instructed to adopt
 " with respect to Lord Selkirk, - - - - -
 " and you will equally enforce the mutual restitution of
 " places captured, and the freedom of trade throughout the
 " Indian territory.

" I have only further to add, in reply to the inquiry con-
 " tained in your dispatch No. 70, that if the Commission-
 " ers are appointed Magistrates of the Indian country, in
 " the terms of the 43rd Geo. III. to which I have already
 " referred, and to the terms of which it is important to ad-
 " here in their commission, their powers extend over Upper
 " Canada, and all those Indian countries without distinc-
 " tion, even within the limits of the territory claimed and
 " possessed by the Hudson's Bay Company."

" 11th February, 1817."

Mr. Uniacke soon discovered the mistake that had
 been committed in delivering this paper to Lord
 Selkirk, and he lost no time in applying to have the
 documents, among which it had been placed,
 returned to him. They were accordingly given
 back, when the paper in question was immediately
 handed by the Attorney-General, to Commissioner
 Coltman, who was then sitting near him in Court,
 and had expressed much uneasiness that it had fallen
 into Lord Selkirk's hands. Before it was thus re-
 stored, a copy had been taken, and Lord Selkirk, in
 the course of the same day, had a conversation with
 the Attorney-General on the subject.

In this conversation Mr. Uniacke spoke of the paper as being an extract from a Dispatch, of which he affected to suppose Lord Selkirk must have been previously informed; and he stated that it was in conformity with the tenor of the instructions it conveyed, (which however he acknowledged had not been officially communicated to him,) that he was then pressing the Court at Montreal, to exact an enormous bail for Lord Selkirk's re-appearance in Upper Canada,—a subject which it will be requisite for me to advert to in the sequel of this communication.

Lord Selkirk, a few days afterwards, attended by Mr. Gale, one of his counsel, went to Mr. Coltman, who, when spoken to on the same subject, did not deny that the paper alluded to was an extract from a Dispatch transmitted by the Colonial Department.

Some weeks afterwards Mr. Uniacke, the Attorney-General, accompanied by Mr. Marshall, the Solicitor-General, made a personal application to Lord Selkirk, for the purpose of persuading him to make no use of the document which had thus fallen into his hands, urging, that as it had been found by him among papers communicated confidentially, it ought also to be regarded in the same light. Lord Selkirk told them it was sufficiently evident that the paper had not been communicated to him in confidence; that it had fortuitously come into his hands by a blunder of some of the parties; that it appeared by its contents, he had been treated by Government with marked injustice; and that although he did not know whether he should make any use of it, he felt himself fully entitled to act with respect to it in

any way he thought fit. The Attorney-General then with a shew of friendship which Lord Selkirk knew well how to appreciate, told his Lordship that his retaining, or making use of the document, could not but tend to hurt his own cause with Government; at all events that he (Mr. Uniacke) should feel it incumbent upon him to make a statement of the circumstance which had occurred. To this Lord Selkirk replied that the Attorney-General was of course at liberty to make what statement he thought fit.

Throughout the whole of the proceedings which I have now to detail to your Lordship, the baneful and unjust effects of this Dispatch will appear but too evident.

In order to render the detail more distinct, it will be advisable to notice—

First,—The proceedings instituted against Lord Selkirk, and some gentlemen who accompanied him into the interior.

Second,—The Prosecutions set on foot by Lord Selkirk against partners, servants, and adherents of the North-West Company; and,

Third,—Prosecutions instituted by the North-West Company against persons employed at, or belonging to, the Red River Settlement.

1st.

In my former communications to your Lordship, I adverted to the subject of several warrants which

had been obtained against Lord Selkirk, and which his opponents had attempted to execute at Fort William, and Red River. I also mentioned generally the grounds upon which it appeared that he had refused to submit to these arrests. Lord Selkirk having afterwards voluntarily repaired to York, in Upper Canada, in order to meet any charges brought against him, he waited upon Mr. Powell, the Chief-Justice, to offer bail for his appearance. Bail was likewise offered by Captain D'Orsonnens and Mr. Allan, whose names were also included in the warrants.

The Chief-Justice refused to interfere, on the ground, as he stated, that no complaint, or warrant was regularly before him. But although Mr. Powell declined taking cognizance of the application made to him, he thought fit gratuitously to proffer his advice on the subject. He told Lord Selkirk that the charge of resistance to legal process was of a peculiar nature; that the law with respect to it was particularly severe; and that the offence was not bailable, even by the Chief-Justice, who, in the case of any other crime, could admit a prisoner to bail. He added that he did not suppose the Attorney-General was disposed to adopt any measure of unnecessary harshness towards Lord Selkirk, but that if the matter were officially taken up, and a regular application in consequence made to him (the Chief-Justice), he could not refuse to issue warrants for the arrest, and commitment of the parties, the effect of which would be, that they must unavoidably be detained in custody till the next Assizes at Sandwich.

which was the case. Proceeded to the Court of Sessions.

The Chief-Justice further observed, that although no official step had been hitherto taken upon the subject, it was impossible to say how soon it might be brought before the Law Officers of the Crown ; and he therefore advised Lord Selkirk, and his friends, to retire within the frontiers of the United States, where they might remain in safety till they should think it advisable to make their re-appearance on British ground.

Lord Selkirk did not take upon him to dispute very strongly the opinion so positively laid down by the Chief-Justice as a lawyer, but he took the liberty of declining to follow the advice he pretended to give as a friend. He determined to proceed at once to Sandwich, from whence the warrants for his apprehension had issued. Before he set out, however, he waited upon Mr. Boulton, then Attorney-General, who, among other things, mentioned that Instructions from the Secretary of State had been communicated to him, containing directions to institute criminal proceedings against Lord Selkirk.

Upon his arrival at Sandwich, in the month of January, Lord Selkirk found that the Quarter Sessions for the District had just terminated ; but, upon the Chairman being informed that the parties accused had come to present themselves before the Magistrates, a Special Session was called, at which a considerable number of them attended.

The first point which was brought forward was the Warrant for Felony which had been issued against Lord Selkirk and several other persons.

The Magistrate by whom that Warrant had been granted, and also the two others who had acted with him in taking the Information upon which it was grounded, were among those present on the Bench. The information had been sworn to by the two clerks of the North-West Company—Vandersluys and M'Tavish,—who, as your Lordship may recollect, had charged Lord Selkirk and the gentlemen with him, upon oath, with having feloniously stolen eighty-three fusils belonging to that Company.

Upon this charge Lord Selkirk stated to the Magistrates that, in consequence of information laid before him at Fort William, he had issued, as a Magistrate, a regular search-warrant, for the purpose of discovering and securing the arms in question, which, in consequence of the search thus authorised, were found secreted, and evidently prepared for a projected attack upon himself, and those who accompanied him. He further stated that the search-warrant itself had been shewn to, and read by, Vandersluys and M'Tavish, and that these men were therefore chargeable with perjury, in having sworn that the fusils were feloniously stolen, when they knew they had been lawfully seized.

Mr. Henry Boulton, then acting as Solicitor-General of Upper Canada,—who had followed Lord Selkirk to Sandwich—supported the charge as much as was in his power. Fortunately, however, another affidavit was produced to the Magistrates, which had also been made by Vandersluys on the same subject. By a comparison of that document with the other information which he had sworn to, it evi-

dently appeared, that if the one affidavit was true the other must be false; and the Court seeing that no reliance was to be placed upon such testimony, set aside the warrant, and discharged the parties from their arrest.

The charge of Felony being thus disposed of, Mr. H. Boulton next produced to the Magistrates a person of the name of Robertson, who had been appointed a Constable for the purpose of executing another warrant which had been issued against Lord Selkirk, and the other gentlemen, by a Dr. Mitchell of Drummond's Island (of whom mention is made in my letter to your Lordship of the 31st July, 1817), on a charge of having committed a riot at Fort William, forcibly entering the gates, putting the inhabitants in fear of their lives, &c. &c. The original warrant which Mitchell had issued was produced, but neither the information upon which it had been granted, nor the person by whom the charge had been laid. The Solicitor-General, however, having stated, that he had witnesses following him from York, who would support the charge, and whom he expected at Sandwich that evening, the Court adjourned.

On the following day, about the time when the Court was to be resumed, the Solicitor-General proposed to Lord Selkirk, that instead of proceeding with the examinations before so numerous a Bench, they should be taken privately before two or three Magistrates. He added, that unless this proposition was agreed to, he would have the parties arrested a-new, and taken before a Magistrate of his own

choosing. Lord Selkirk replied, that it was immaterial to him, before whom the examinations should proceed; and that the matter must rest with the Magistrates. Mr. Boulton then proceeded to the Court-House, where he made the same proposition; but the Magistrates considered it as improper, and accordingly rejected it.

Lord Selkirk, Captain D'Orsonnens, and Mr. Allan, were then sent for, that the examinations might go on; but Mitchell's warrant having been left, at the adjournment of the Court, in the custody of Robertson the constable, the attendance of that person was previously required. He refused to come, and Mr. Boulton, who, on the rejection of his proposal, had left the Court-House, also declined to return. The Magistrates appeared, disposed to assert their authority, and were about to direct the Sheriff to bring Robertson before them, when Lord Selkirk, being apprehensive that much time would be unnecessarily consumed in these discussions, and being anxious to proceed without delay to Lower Canada, requested that the Magistrates would waive their objections to Mr. Boulton's proposal,—to which request they acceded, though with considerable reluctance. Upon this, Mr. Boulton, attended by Robertson, quickly made his re-appearance, and named the Magistrates who were to form the Court for the further examination of the charges. In addition to the Chairman, and another of those who had attended at the previous examination, he selected a Mr. McIntosh, whom he brought with him,—an avowed agent of the North-West Company.

The Court being thus formed, Mr. Boulton brought forward his witnesses to support the charge of riot, &c. for which Dr. Mitchell's warrant had been issued. Their evidence went to prove that force had been used for the purpose of entering Fort William. Lord Selkirk, in reply, stated, that as a Magistrate, he had issued warrants for the arrest of certain persons at that place, on criminal charges exhibited against them, and that these warrants, of which he produced copies, had been unlawfully resisted by the parties. He contended, that it was incumbent on the prosecutors to shew that the force made use of to carry the arrests into effect, had been unnecessary or excessive. The Magistrates, however, were of opinion, that it was requisite for Lord Selkirk to produce other evidence of this alleged resistance; and as he had not had the opportunity of bringing his witnesses with him to Sandwich, it was necessary for him to enter into a recognizance for his appearance to answer the charge of riot at the next assizes. Bail was accordingly required from Lord Selkirk, of £200, and also, to a smaller amount, from Captain D'Orsonnens and Mr. Allan.

It was then suggested by Lord Selkirk that some person should be bound over to prosecute; but to this the Solicitor-General objected, declaring to the Court, that he was carrying on the prosecution on the part of the Crown, by the express orders of the Secretary of State.

The next point which came before the Magistrates was a charge which Mr. Boulton also said he was officially directed to bring forward against Lord

Selkirk,—viz. of resistance to legal process, in having, together with others, refused to submit to the last-mentioned warrant, (that for the riot, &c.) at the time the execution of it was attempted at Fort William, by Robertson the constable. On this subject Lord Selkirk submitted, in explanation to the Magistrates, the circumstances which I have already noticed in my letters to your Lordship;—in addition to which it appeared, that the service of the writ was, on the part of the constable, incomplete. The Magistrates, however, properly conceived that, in this, as in the former case, they could not dismiss the charge upon Lord Selkirk's own testimony; but differing,—as indeed well they might,—from the doctrine laid down by the Chief-Justice of the province, namely, that resistance to legal process was not a bailable offence, they were satisfied (and the Solicitor-General did not dispute the point,) with binding Lord Selkirk to appear at the next Assizes, in the trifling recognizance of fifty pounds,—and Mr. Allan, (also named in the warrant) in one to half of that amount.

The only remaining point upon which the Magistrates were called to act, was a charge which had been brought by Smith, the deputy-sheriff, whose irregular conduct, in the interior, I noticed in my letter to your Lordship of the 21st of February last. At the Quarter Sessions, (viz. those held in October 1817,) Smith had charged Lord Selkirk, and several other gentlemen, with an assault and false imprisonment. In consequence of his information upon oath, a bill of indictment had of course been

found by the Grand Jury. The Magistrates bound Lord Selkirk, in a trifling recognizance, to appear at the next Quarter Sessions, to answer this charge; and Mr. Allan, whose name was also included in the indictment, likewise gave bail for a similar appearance.

Thus concluded the proceedings before the Magistrates at Sandwich, in January 1818.—But as this Indictment at the Quarter Sessions is the only one which has been any where found against Lord Selkirk, it may be advisable to take this opportunity of noticing the proceedings which subsequently took place with regard to it. The circumstances relating to them will be found not unworthy of attention.

From the pressure of other important business in Lower Canada, Lord Selkirk was prevented from re-appearing to answer this charge at the first Quarter Sessions, held at Sandwich. But sufficient reasons having been given, the Magistrates consented that his recognizance should stand over till a subsequent session. Mr. Allan, however, having returned with his witnesses at the time appointed, was tried and acquitted.

When Lord Selkirk went up to the Sandwich Assizes, held in September last, he was accompanied by the necessary witnesses for his defence upon this indictment; but no steps were taken by the Law Officers of the Crown to remove it from the Quarter Sessions to the Superior Court. At the conclusion of the assizes, it was communicated to Mr. Robinson—who had succeeded Mr. Boulton, (senior,) in the office

of Attorney-General,—that, as the case was of a nature which admitted the defendant appearing by attorney, Lord Selkirk should not think it requisite to be present in person at the next Quarter Sessions, but would leave an agent, properly authorised, to appear in his behalf. To this no objection was made by the Attorney-General, who merely remarked, that it would be necessary for Lord Selkirk to execute the power of attorney for that purpose in proper and legal form.

The witnesses for the defence accordingly remained at Sandwich until the next Quarter Sessions. A short time, however, before the session opened, Mr. Elliot, one of the counsel for the North-West Company, received the following Letter from the Attorney-General:—

“York, Sept. 21, 1818.”
“Dear Sir,
In the case, the King v. the Earl of Selkirk and Captain Mathey, for the resistance to the Deputy Sheriff, and imprisoning him, I request you to move, on the part of the Crown, that the indictment be quashed. It is irregular in giving no addition to the parties, and in having a blank for one of the names, and it is otherwise informal. Should the Magistrates decline (which cannot be, as it is a matter of course to quash an indictment at the request of the Crown) you will find undoubted authorities upon the subject in Chitty's Treatise upon Criminal Laws. The charge is a serious one, and it is necessary that the
to noisome

—*This indictment was not for resistance to the Deputy Sheriff.*

"proceedings upon it should be such as not to defeat the
"ends of justice."

"I am, dear Sir,

"Your's truly,

"JOHN B. ROBINSON."

"Will you also move, in my name, that the recognizances of the Earl of Selkirk and Frederick Mathew, to answer to the charge, and also of the witnesses to prosecute, be renewed, to bind them to appear at the next Assizes for your District."

Thus did the Attorney-General think fit to direct proceedings to be over-ruled, which he had a few days before officially and openly assented to,—namely, that Lord Selkirk should appear by attorney to the bill of indictment at the Quarter Sessions. If the case was such as to require removal from that Court, why had it not been removed to the late assizes, where Lord Selkirk was bound in recognizances to appear, and when he might have been tried in person? If, as stated in Mr. Robinson's letter, the ends of justice required that the indictment should be quashed, and the case brought up to a superior court, why was it not quashed before Mr. Allan had been tried upon that indictment in the inferior court, and acquitted? If, as the letter also stated, the charge was "a serious one," how came the Law Officers of the Crown not to discover this eight months before? On the 14th of September, the Attorney-General sees nothing so serious in this

long pending charge, as to make him withhold his official assent to its remaining before the Quarter Sessions, or even to the person indicted being tried by attorney, in that court; but, on the 21st of the same month, he looks upon the matter in a different light, and authorises a lawyer, employed by the North-West Company, to make a motion, on behalf of the Crown, for its removal! If the charge was a serious one, it must have been so from the first; and it was the duty of the Law Officers of the Crown to have seen that an indictment, drawn for such a charge, should not have been, as the Attorney-General himself acknowledged, replete with flaws and irregularity.

In consequence of the directions given by the Attorney-General, Mr. Elliot moved the Court, that the indictment should be quashed. Lord Selkirk's counsel offered to waive all objections arising from the informalities, omissions, &c. in the indictment, and to rest merely on the merits of the case. The magistrates refused to quash it, or to renew the recognizances for the assizes, as moved for. The trial, however, did not go on, though Lord Selkirk's witnesses had travelled six hundred miles to give their evidence. I have not been informed what subsequent proceedings, if any, have taken place on the subject: but if the Law Officers of the Crown are to be thus permitted to avail themselves of their own blunders, in order to put off Crown prosecutions from session to session, and from circuit to circuit, it is not easy to foresee when those parties, whom

Government may think fit to accuse, will find an opportunity of obtaining their acquittal*.

After the proceedings before the Magistrates of Sandwich, in January 1818, were brought to a close, as already mentioned, Lord Selkirk set out for Lower Canada, and appeared in the Court of King's Bench at Montreal, in pursuance of recognizances exacted from him, in the course of the preceding summer, by Mr. Coltman the Commissioner of Special Inquiry, in his capacity of Magistrate for the Indian territory. The exaction of this bail was evidently irregular, and the irregularity was distinctly pointed out to Mr. Coltman at the time. To require bail from a person not in the Canadas, to appear at a court in Lower Canada, for an offence alleged to have been committed in Upper Canada, was beyond the legal authority of any magistrate. Mr. Coltman, however, thought fit, when at Red River, to

* From information received since the date of this letter, it appears that the Magistrates at Sandwich—differing from the Attorney-General, in the doctrine laid down by him, (in his letter to Mr. Elliot) that the indictment at the *Quarter Sessions* must be quashed as a matter of course, and the parties be bound to appear at the next *Assizes*,—adjourned the case to the next *Quarter Sessions* in January, binding the parties to appear at that time. The principal witness for the defence, having been obliged to return to Montreal, came back again to Sandwich—a journey of 1200 miles—to attend at these sessions. The prosecutors, however, did not appear; and no satisfactory reason having been given for further delay, the cause proceeded to trial, and Lord Selkirk, appearing by attorney, was acquitted.

exact recognizance from Lord Selkirk—himself in £6000, and two sureties in £3000 each—for his appearance at Montreal in the Lower Province, to answer for offences stated to have been committed at Fort William in the Upper. Several other gentlemen, who were with him at Red River, were also bound by Mr. Coltman in large recognizances, to the same effect.

Lord Selkirk having accordingly presented himself before the Court of King's Bench at Montreal, in the term held in March last, Mr. Uniacke, the Attorney-General, was obliged to admit that he could not legally institute any proceeding in Lower Canada upon these alleged offences. One would have supposed that the irregularity of Mr. Coltman, in taking bail from the parties to appear in Lower Canada, having been thus officially admitted by the Attorney-General of that province, the Court would have had nothing farther to do on the subject than to discharge the recognizances so taken. This would have been the plain, equitable, and legal mode of proceeding. But a censure would have been thereby conveyed upon the conduct of Mr. Coltman; and, to avoid this, the Attorney-General adopted a step which deserved as much to be censured as that which had been pursued by the Commissioner himself. He moved the Court of Montreal to require a new recognizance, and in the same amount, for Lord Selkirk's appearance, to answer the same charges before a Special Court of Oyer and Terminer, to be held in Upper Canada. This step he was induced to take—as he distinctly admitted to Lord Selkirk—in conse-

quence of the Dispatch from the Colonial Department, of the 11th of February. In vain did Lord Selkirk's counsel urge, that the Court at Montreal had no right to exact bail in this case,—that they could not issue any compulsory process beyond the limits of their own regular jurisdiction,—and that, even if the proposed exaction had been legal, it was, in this case, vexatious, oppressive, and unnecessary, inasmuch as the parties had already given bail to the magistrates in Upper Canada, who alone had a right to demand it, and who had been satisfied with recognizances amounting to three hundred and fifty pounds, in a case where Mr. Coltman had exacted six thousand! The excessive amount of the bail could be of no consequence to Lord Selkirk in a pecuniary point of view, as he, of course, intended to appear at any court, which had a right to take cognizance of the charges against him. But the renewal of so large a recognizance, though wholly unnecessary for the ends of justice, served to support the credit of the Commissioner, and to raise a false and injurious impression with respect to the magnitude of alleged offences, and the weight of supposed evidence.

It should not be passed over, that when the Judges of Montreal gave this order for the renewal of Mr. Coltman's bail, of the two who composed the Court upon that occasion, one was Mr. Justice Reid, who, but a few months before, had openly declared from the Bench, that, in consequence of his connection with the North-West Company, he could not take any share in judicial proceedings wherein they

were concerned; and he therefore, together with Mr. Justice Ogden, who alleged a similar scruple, rose and retired from the Bench.

At the time appointed for the Assizes to be held at Sandwich in September last, Lord Selkirk, with Captain D'Orsonnens and Mr. Allan, again proceeded to that place. The first business brought forward upon that occasion was a bill of indictment which the Attorney-General laid before the Grand Jury, charging Lord Selkirk, and several other gentlemen, with resistance to legal process in the case of the warrant issued by Dr. Mitchell, and entrusted to Robertson the constable. It was this case which was so particularly pointed out by the dispatch of the 11th of February. In support of this indictment, the Attorney-General produced several witnesses, but, after a short deliberation, the bill was thrown out by the Grand Jury, and at length met with the fate it deserved.

Although the Attorney-General of Upper Canada was thus foiled in his attempt to procure a true bill of indictment in the case so specially pressed upon him by the Colonial Department, there still remained several other charges against Lord Selkirk, in which the Magistrates of Sandwich, in January last, had bound him in recognizances, and upon which, as he had now brought with him his witnesses from Montreal, he was ready to take his trial. These charges, however, being of a specific and definite nature, the issue, if brought to trial, would have rested upon a simple point of fact. The Attorney-General did not think fit to bring them forward, conceiving that

it would be more prudent to confine himself to some more general and indefinite species of accusation. He therefore preferred a bill before the Grand Jury against Lord Selkirk, and some others, for a conspiracy, to injure or destroy the trade of the North-West Company. To support this charge he produced about forty witnesses. These were almost all clerks and servants of that Company; and the Attorney-General made the modest proposal, that one of their masters, Mr. Simon M'Gillivray, (a principal partner and agent of the very Company, for injuring whose trade this charge of conspiracy was preferred, and who at the time stood indicted under a true bill found for a conspiracy to destroy the Red River Settlement,) should be admitted into the private room of the Grand Jury, for the purpose of examining these witnesses.

This proposal, as might have been expected, was peremptorily rejected; upon which Mr. Robinson claimed the right himself of attending the Grand Jury, and conducting the examination of the evidence. This he maintained was a privilege to which he was entitled as a Law Officer of the Crown, and that it was his duty, upon the present occasion, to insist upon it, on account of the great extent and complication of the testimony, which could not, as he said, be made intelligible to the Grand Jury, unless properly marshalled. The legality of this claim, on the part of the Attorney-General, was certainly most questionable,—the exercise of it in this country is quite unknown,—and the injustice of it obvious and glaring. It is evident that such a privilege would

directly counteract every benefit which the constitution of Grand Juries was intended by the Law of England, to secure. But if there had even existed the slightest doubt on the subject, or if it was at all left to the option of the Attorney-General, to insist upon it or not, every common feeling of delicacy, and every sentiment by which an honourable man is generally actuated, ought to have prevented him, in the case in question, from urging the claim. As Public Prosecutor, he had mustered in support of his Bill a sufficient force,—in numbers at least sufficient,—to go before the Grand Jury, and, adhering to the usual and recognised practice of the Law of England, he ought to have left it to that Jury to investigate the evidence so laid before them. In deviating from such practice, he was giving himself an opportunity—for what other object could he have in view,—of putting such leading questions to his witnesses, as might give a colour to their *ex parte* evidence which it could not in justice bear, and thereby tend to induce the Grand Jury to find a Bill, where they otherwise would not. And on this subject I have no hesitation in stating to your Lordship, that it was generally believed in Canada, that the Attorney-General, who, in his public character, thus insisted upon so unusual, and, I will add, so illegal a claim, in order to obtain a true bill against Lord Selkirk and others, for a conspiracy to destroy the trade of the North-West Company, had actually received a retainer from that Company, as one of their professional Counsel. It must be left to your Lordship, as Secretary of State for the Colonies, to judge whether

an official inquiry should not be directed for the purpose of ascertaining the truth of the allegation. Illegal however as the claim was, the Grand Jury, trusting to the Attorney-General's statement of the law upon the subject, were induced to acquiesce in it.

With respect to the Grand Jury, it may be mentioned, that Lord Selkirk made objections to two individuals being continued upon it. One of these was an agent of the North-West Company, and the other, (his brother,) was also employed in the Company's affairs. It is not easy to imagine a much stronger case of unfitness than that of an agent, employed and paid by a trading company, being called upon to decide as a juror upon a charge of conspiracy to injure that Company's trade. But Chief-Justice Powell thought—or at least decided—otherwise. He declared that the connection of these jurors with the North-West Company, was not sufficient to exclude them from continuing on the Grand Jury; adding, that if these two gentlemen felt any bias, or partiality, they would, as men of honour, retire of their own accord. It is perhaps unnecessary to add, that the two gentlemen remained upon the Grand Jury throughout the whole of the proceedings.

Among the witnesses brought before the Grand Jury by the Attorney-General in support of his bill, was M^r Tavish, the same person, who, together

* It further appears, that the Grand Jury referred the point to the Chief-Justice, who declared from the Bench, that the Attorney-General had the right which he claimed, and that its exercise was quite customary in England.

with Vandersluys, had made the celebrated affidavit that Lord Selkirk had feloniously stolen the eighty-three fusils belonging to the North-West Company. This charge, it may be recollected, had been dismissed by the Magistrates, (who had the proper cognizance of it,) on the ground that no reliance was to be placed on the testimony brought to support it. Lord Selkirk had determined to prosecute these men for perjury. The necessary information upon oath was accordingly put into the hands of the Attorney-General for that purpose, and he was officially required to prepare the bill of indictment. This he refused to do, and produced before a Grand Jury as a credible witness, the man whom it was his duty to have indicted for perjury*.

* The Attorney-General (Mr. Robinson) was required to prosecute Vandersluys and M^r Tavish, for wilful and corrupt perjury, upon the affidavit of Mr. Allan, who declared upon oath that they had deliberately read the search-warrant which Lord Selkirk, as a magistrate, had issued for the purpose of discovering and securing, the eighty-three fusils which these men subsequently swore Lord Selkirk (with several other gentlemen,) had feloniously stolen, and carried away. The Attorney-General said he would attend to this requisition; but that, being instructed to prosecute Lord Selkirk for this alleged felony upon the evidence of these two men, that charge must be first disposed of. A few days afterwards, however, the Attorney-General informed Mr. Allan, that he did not intend either to proceed against Lord Selkirk (and the other gentlemen), for the felony, or to prosecute M^r Tavish (who was then upon the spot), for the perjury,—saying, that he, as well as Vandersluys, had not committed wilful and corrupt perjury, but that, in making their affidavit, they had merely fallen into a mistake as to the law upon the subject.

The Attorney-General took three days to marshal and examine his witnesses before the Grand Jury, who continued in further deliberation for two days more, in the course of which they again called on several of the witnesses who had already been examined. From questions put to the Court by their foreman, it appeared that they were much perplexed with doubts, arising from the vague and indefinite nature of the law relating to conspiracy. The explanations given to them by Chief Justice Powell were not very likely to enlighten them, and the week ended before the Grand Jury decided upon the bill.

The Court again met on the ensuing Monday, and of seventeen jurors who had regularly taken a part in the discussions, fifteen were that morning assembled in the Grand Jury room. They appeared to be looking out with impatience for the arrival of the other two, in order to bring the business to a termination,

In consequence of this decision,—which appeared to the prosecutors nothing less than an evasion on the part of the Attorney-General,—and as the Crown Lawyers in Canada had come to the extraordinary determination not to allow any criminal charge to be conducted by private prosecutors,—no bill of indictment was preferred against Vandersluys and McTavish for perjury. But the prosecutors being convinced that there was sufficient evidence to establish the guilt of the parties, handed Mr. Allan's affidavit (together with a list of witnesses who were then present, and able to support the charge), to the Grand Jury, in order that, if they saw fit, the matter might be brought forward by way of Presentment. Before the Grand Jury, however, had an opportunity of entering upon the inquiry, their proceedings and functions were suddenly put a stop to by Chief Justice Powell, in the extraordinary manner noticed in page 133.

when the Chief-Justice unexpectedly addressed the Bar, consisting of the Attorney-General and two other lawyers. He began by making some acrimonious observations upon the conduct of the Grand Jury, who, he said, had acted with great impropriety, in keeping the Court waiting for several days, during which period no business had been brought before it; and then, — without sending for the Grand Jury, who were sitting in the adjoining room, — or asking any explanation, — or even making inquiry whether they had any presentment to make, — he declared the Court to be adjourned *sine die*, and immediately left the Bench.

The proceedings of the Grand Jury were thus unexpectedly brought to a stop, and the session abruptly terminated. The Chief-Justice himself had appointed these Assizes at Sandwich to be held, contrary to the usual custom, the last of that circuit; and he expressly stated, as his reason for so doing, that the business at that place was likely to take up much time, and ought not to be broken off by other judicial engagements. When the Court rose on the preceding Saturday, he made no animadversions on the length of time which had been occupied by the Grand Jury, (more than half of which had been taken up by the Attorney-General, in examining his witnesses), nor did

It appears that, when the Court met on the Monday morning, the Sheriff had been sent to inquire, whether the Grand Jury were ready; and having reported, upon his return, that two of the Jurors had not yet arrived, the Chief-Justice began his address by stating that the conduct of the Grand Jury amounted to a contempt.

he then express any objection to the adjournment of the Court till Monday. But before it was resumed, he no doubt suspected that very little chance remained as a true bill being returned against Lord Selkirk and his friends, and the Chief-Justice thus ingeniously stepped in to shield the Attorney-General from the mortification of having another of his bills thrown out, after the uncommon pains, and unlawful means, he had taken to have the indictment found by the Grand Jury.

2nd.

The second class of criminal prosecutions which I have to notice, is of those instituted against partners, clerks, and other persons in the employment of the North-West Company; under which head it will be seen, that the Law Officers of the Crown in Canada have taken the most unjustifiable means to harass the prosecutors, and to render the prosecutions ineffectual. In spite, however, of their endeavours to stifle all criminal proceedings attempted against persons connected with the North-West Company, numerous bills of indictment have been found against them by various Grand Juries in Canada.

In the Criminal Term of the Court of King's Bench, held at Montreal in March 1817, four bills of indictment were found against two partners, and several other persons in the employment of the North-West Company. These were for stealing in dwelling-houses, for maliciously shooting at the Red River settlers, and for burning the houses at the Settlement in the

year 1815. A true bill was also found, in the same term, against Archibald M'Lellan, a partner, Charles de Reinhard, Cuthbert Grant, and Joseph Cadotte, clerks of that Company, for the murder of Mr. Owen Keveney, a clerk of the Hudson's Bay Company, who was proceeding down the river Winnipeg with some young breeding cattle for the use of the Settlement at Red River, in the year 1816.

The Grand Jury, summoned under a commission of Oyer and Terminer, held at Montreal in the months of February and May 1818, also found thirteen bills of indictment against persons belonging to the North-West Company; of which the following is a general abstract:—

For Murder.—Bills were found against thirteen partners, and twenty-five clerks and servants of the North-West Company.

For Robberies, Burglaries, Grand Larcenies, and stealing in Boats on a navigable River.—Bills were found against ten partners, and about fifty clerks and servants of that Company.

For Arson.—Bills were found against one partner, and twelve clerks and servants of that Company.

Most of these indictments related to crimes connected with the successive attacks upon the Red River Settlement, and the consequent dispersion of the settlers, in the years 1815 and 1816. A bill of indictment for a conspiracy to destroy the Settlement was also found against Mr. William McGillivray, the chief partner of the North-West Company,

against Mr. Simon McGillivray, one of their principal London agents, and against forty other partners, clerks, and adherents of that Company. Among the partners included in this indictment, it deserves to be noticed, that several of them acted at the time as Magistrates for the Indian territory, under an Act of Parliament brought in upon the suggestion of the London agents of the Company. In the letter which they addressed to your Lordship's Department, on the 18th of March, 1814, and which they afterwards published, they take no little credit for having suggested this Act of Parliament; mentioning, at the same time, that several justices of the peace had been appointed under it, who, "they hoped, would be enabled to suppress, by apprehension and conviction in the Courts of Lower Canada, all acts of aggression on either side."—They forgot, however, to add, that the justices so appointed, were all on one side, being no other than partners of the North-West Company; and how far they have exerted themselves, under a commission of the peace, to suppress acts of aggression, may be judged of by the bill of indictment which has been found against the most active of these Magistrates, for a conspiracy to destroy the Red River Settlement.

In deliberating upon this bill, the Grand Jury were occupied for three days; but although the evidence produced to them was very extensive, they did not require an Attorney-General, or any professional assistance, to marshal and examine the witnesses. The Jury felt themselves fully competent to that duty; and, indeed, most of the acts charged to have

been committed in furtherance of the conspiracy, were felonies upon which the Grand Jurors had already found true bills. This bill of indictment was found by the Grand Jury without a single dissentient voice. At the close of the Court of Oyer and Terminer, it was publicly declared by several of the jurors, that in the whole course of their deliberations, not only upon this bill, but on all those found by them during the session, they had, upon no occasion, been under the necessity of deciding any question by a majority of votes.

One of the cases which deserves particular notice, as falling under this class of criminal prosecutions, is that of George Campbell. This man had been one of the first of the settlers who had entered into contract with Lord Selkirk, under whom he held a farm at Red River. His conduct, in deserting from the Settlement, and promoting by every means in his power, the plans set on foot by the North West Company for its destruction, is fully detailed in the printed Statement I had the honour of transmitting to your Lordship in the month of July 1817. After robbing the Settlement of the field-pieces and some other arms procured for its security, Campbell headed a party of his new confederates, and attacked the settlers with fire-arms. In these attacks several of the colonists were severely wounded, and one of them died of his wounds. After succeeding in driving off the settlers, he burned their houses to the ground. For these felonious services to the North West Company, Campbell received from the partnership besides other perquisites, a remuneration of £100.

Four bills of indictment were found against Campbell, by the Grand Jury at Montreal, in March 1817. Of these, one was for the robbery of the field-pieces, &c.—one for arson,—and two for maliciously shooting at the settlers. In these indictments, two of the partners and several of the clerks of the North-West Company, were included. Lord Selkirk had succeeded in getting Campbell apprehended, and the witnesses for the prosecution were assembled at Montreal, in the Criminal Term held in the month of September, when the trials upon these indictments ought to have taken place. But the Attorney-General stated, that, by an order of the Governor-in-Chief, issued by the advice of the Executive Council at Quebec, these trials were to be removed to Upper Canada. No opportunity was afforded to the parties by whom the charges had been brought forward, to urge those objections which could not but obviously occur against the measures thus adopted by the Provincial Government. The witnesses had been kept at Montreal, at a great expense, for the expected trials; and it was evident that the removal of these trials to a distant province, and the postponement of them to an indefinite period, was inconsistent with every principle of common justice. Besides, as it was found requisite, in consequence of such removals, that fresh bills of indictment should be preferred in Upper Canada against the same persons, and upon the same charges, it was evidently rendering totally useless and nugatory all the proceedings of a Grand Jury in the Lower Province, by whom, upon evidence legally

brought before them, true bills had been found against the parties for capital offences.

Although the supporters of Campbell had evidently gained a considerable point in having his trial, among others, thus transferred to Upper Canada, yet they thought it would be still more prudent to prevent him, if possible, from being tried at all. The ingenious plan which they adopted for this purpose, deserves to be noticed.

In the month of May last, about the time when it was proposed that Campbell and the other prisoners should be removed from the gaol in Montreal, and sent to Upper Canada, it was discovered that Campbell was no where to be found. Upon inquiry it appeared, that Dr. Selby, a physician of Montreal, had visited Campbell in prison about a week before, and stated that the prisoner was in a high fever and dysentery, and that his life was in imminent danger. The regular medical attendant of the prison was never consulted on the subject; nor did he know that the prisoner had been ill. Upon the report of Dr. Selby, however, Mr. Reid and Mr. Ogden, (the two puisne Judges, who had, not long before, declared in open court they would not act in any matter in which their connections with the North-West Company were interested,) repaired to the prison, and signed a warrant, or order of discharge to the gaoler for Campbell's liberation. The sick prisoner was accordingly carried out to the hospital in proper form, wrapped up in a blanket. No directions were given to have him more closely watched

than any of the common hospital patients. Within forty-eight hours from the time of his removal, he asked permission of his sick-nurse to go and visit his wife and children. She forbade him to go out merely on account of the badness of the weather. The dying culprit, however, took an opportunity of walking out unobserved, and, as might be expected, made his escape. He is now resident near Detroit, within the territories of the United States. Dr. Selby, who officiated as physician to the hospital, and on whose report Campbell had been removed from the prison, was soon apprised by the Garde-Malade, that the sick man had gone out:—"Ce n'est pas bon," said the Doctor to the Garde-Malade; and, jealous probably, that the Sheriff might recover his patient, he made no further remark, and gave no information on the subject; nor was Campbell's escape known till several days afterwards. — A prisoner under commitment on charges similar to those for which Campbell was in custody, could not be regularly discharged, except by writ of Habeas Corpus, and although the Chief-Justice was at his country seat, only two or three miles from Montreal, this measure was not resorted to. After Campbell's escape, however, a writ of Habeas Corpus, bearing date before his discharge, and signed by the Chief-Justice, was brought by a lawyer employed by the North-West Company, and presented to the gaoler, with a request, (which, however, he refused to accede to,) that he would give up the order of discharge which had been granted by Judges Reid and Ogden,

and antedate his own return to the writ of Habeas Corpus. Such is the mode in which justice is administered in Canada.

An escape of a different, but not less improper description was also permitted in the case of Cuthbert Grant, (one of the half-breed clerks of the North-West Company,) whose atrocious proceedings in the interior were likewise fully noticed in the printed Statement transmitted to your Lordship in July 1817. Several bills of indictment for capital offences had been found against Grant, at Montreal. He was indicted, along with Campbell, for maliciously shooting, and for burning the houses of the settlers, in 1815. Bills had also been found against him for capital offences committed at a later date. Two were found against him for murder, and two for robberies committed in furtherance of the conspiracy against the Red River Settlement, in which indictment (for conspiracy) he was also included. Although Grant was in prison at the time these bills were found against him, the Attorney-General of Lower Canada thought fit soon afterwards to admit him to bail under a trifling recognizance. Lord Selkirk addressed a letter to the Attorney-General, pointing out the impropriety of allowing a person against whom bills of indictment had been found for murder, and other capital crimes, to be thus at large, and requested that his person might be secured, so that he might be sent to Upper Canada, to which place his trials had been removed. Though Grant was known at this time to be in Quebec, the Attorney-General took no notice of this ap-

plication till after a considerable interval of time, during which Grant made his escape from the province. This noted ruffian, over whose head are now depending no less than thirteen bills of indictment found against him for capital felonies, has been conveyed back, in the canoes of the North-West Company, to the Red River, renewing his vows of vengeance against the Settlement, and exhibiting to the persecuted settlers, as well as to the native Indians, a glaring and melancholy proof that the most sanguinary atrocities are to be permitted to pass with total impunity.

Several other persons, the accomplices of Campbell and Grant, have in like manner, in consequence of being improperly admitted to bail, been allowed to make their escape.

Of these, Peter Pangman, another half-breed in the service of the North-West Company, was one of the most active of the persons who were employed in the attacks upon the Settlement in the year 1815. He was included with Campbell in the indictments found for robbery and arson. He was admitted to bail with the consent of Mr. Pyke, who was authorised by the Attorney-General of Lower Canada to act in his name on behalf of the Crown. The application to admit Pangman to bail was not communicated to the Prosecutor's Counsel till the day before the matter was taken into consideration by the Chief-Justice, and Mr. Pyke refused to shew to them the affidavits upon which the application was grounded. Objections were made by the Counsel to the admission of bail, not only

on account of the magnitude of the offences for which the prisoner had been indicted, and the great probability of his escape, but also on account of the strong evidence of his having committed crimes of a still deeper dye. The Counsel pledged themselves to produce proof of this by affidavit, if time were allowed them, and in fact bills of indictment have since been found against Pangman for those very crimes. The Chief-Justice, however, declared, that he could not recognise any private prosecutor; that the business was in the hands of the Law Officers of the Crown; and that, as they did not object, the Court could not refuse to discharge the prisoner upon bail. Pangman, of course, made his escape, and was also, like his accomplice in villainy Euthbert Grant, carried up into the interior in the canoes of the North-West Company.

Seraphim Lamarre was also liberated with Pangman. He was a regular clerk of the North-West Company, and had been very active in the destruction of the Settlement in 1815. He was included with Campbell in the indictments found for robbery, and maliciously shooting at the settlers. Indictments have likewise been found against him for capital offences committed in the subsequent year. — Louis Perrault, and Joseph Brisbois, were also admitted to bail, though in custody, the one on a charge of murder, the other of robbery, for which true bills of indictment were soon afterwards found by the Grand Jury. None of these persons have appeared, in pursuance of their recognizances, to answer the

charges for which they were committed. Brisbois and Perrault have been also carried off to the interior in the North-West Company's canoes.

After these examples of culpable negligence, to use the most gentle term—in the Law Officers of the Crown, in thus permitting notorious criminals to escape without trial, though in actual custody, it will not be thought very extraordinary, that they avoided or let slip, the opportunity, when in their power, of apprehending other offenders against whom similar charges had been preferred. In the month of February last, when so many bills of indictment were found, as above-mentioned, against partners, clerks, and servants of the North-West Company, many of the persons so indicted were at Montreal, or in its immediate vicinity. Bench warrants were issued against these persons, and they might have been apprehended without difficulty; but the Attorney-General, instead of delivering the warrants to the Sheriff, as it was his duty to do without delay, kept them in his own possession for two months. At the opening of the adjourned Session of the Court of Oyer and Terminer, in the month of May, at which the parties ought to have been brought to trial, the Sheriff being called upon by the Court to produce the persons against whom indictments had been found, stated that the warrants had been only put into his hands by the Attorney-General about ten days before, and that the only persons he could produce were those connected with the Red River Settlement, (against whom some indictments

from all quarters had been sent to the Attorney-General)

had been also found, and of whose trials I shall afterwards take notice,) but that none of the persons connected with the North-West Company who had been indicted, could be found in the district. Of course these important trials could not now come on, although the witnesses for the prosecution had been already detained six months at Montreal for the purpose of giving their evidence, and several of these had been brought down for that object, two and even three thousand miles from the interior. A

very small proportion of these witnesses could now be persuaded to remain any longer, as they saw but little probability of the trials being brought forward in which their testimony would be required. An immense expense, incurred by the prosecutors in bringing them to Canada, and supporting them while there, has thus been rendered entirely useless and unavailing.

Notwithstanding the mass of indictments already noticed as having been found in Lower Canada against partners, clerks, and others employed by the North-West Company, for capital offences of various descriptions, it appears that the Law Officers of the Crown had brought none of them to trial within that province, except that which was found against Charles de Reinhard and Archibald M'Lellan, for the murder of Mr. Keveney, a clerk of the Hudson's Bay Company. In this case it will be found that the Attorney and Solicitor-General having positively refused to permit the Counsel for that Company, as prosecutors, to participate in the management of the trial, took thereby the most

effectual method to render the prosecution abortive.

Mr. Uniacke had taken upon himself not to proceed upon the bill of indictment found at Montreal, against de Reinhard and M'Lellan, but removed the case to Quebec. He assigned no good ground for thus transferring the charge; but he probably thought that, exclusive of the chance it was giving to the parties accused of the murder to have the new indictment thrown out by a Grand Jury at Quebec, he might hope, at all events, to find, at that place, a petty Jury, which would answer the only view he could have in the transfer. It should also be mentioned, that he had positively assured the counsel of the private prosecutors, that he would leave it to them, on the trial, to conduct the examinations of the witnesses for the Crown, and the cross-examination of those for the prisoners. On the arrival, however, of these counsel at Quebec, about a fortnight afterwards, he, together with the Solicitor-General, expressly refused to admit them to the promised participation. Lord Selkirk, being convinced of the total incompetency of the Law Officers of the Crown at Quebec, to conduct the important trials of these two prisoners in the manner that public justice demanded, remonstrated strongly against this unexpected, and illegal determination. Finding, however, that his remonstrances had no effect, he applied to the Governor-in-Chief, and I beg leave most particularly to draw your Lordship's attention to what passed between Sir John Sherbrooke and Lord Selkirk on that subject;—and I accordingly herewith

transmit copies of their letters for your Lordship's perusal*.

The trial of De Reinhard and M'Lellan, accordingly came on at Quebec, under the exclusive management of the Crown Lawyers. A new bill of indictment having been found against them by the Grand Jury at that place, the prisoners were arraigned and tried together. Being asked when they would be prepared for their trial, they named the day previous to the close of the term. The trial accordingly came on upon that day, and was conducted in such a manner, that only two or three of the principal witnesses for the prosecution had been examined during two days, when, by the close of the term, the legal powers of the Court were at an end, and the trial was unavoidably broken off. It was the duty of the Law Officers of the Crown to have prevented this extraordinary occurrence. They ought to have foreseen that the evidence to be brought forward was such as to make it very improbable that the trial could be concluded before the close of term, and it was therefore their duty at once to have applied for a special Court of Oyer and Terminer to try the prisoners. If, on the other hand, the Attorney and Solicitor-General did not foresee that the evidence would be protracted to so great a length, it was a clear proof that they were totally ignorant of the nature of the case, and, of course, incompetent to the task of properly conducting it.

A special Commission of Oyer and Terminer was

* See Appendix [G.]

now issued for the purpose of resuming the trial,—but not until after an interval of several weeks, during which the prisoners had ample opportunity afforded them to tutor their witnesses, and suborn such testimony as would best tend to counteract the effect of the evidence already produced against them. The evidence which appeared against M'Lellan was such as to give a very strong impression of his guilt. Notwithstanding this, after the trial was broken off in the manner above-mentioned, the Attorney and Solicitor-General agreed to the extraordinary step of admitting the prisoner to bail. A Grand Jury at Montreal, and another at Quebec, had found two bills of indictment against him as an accessory before the fact to this murder; a proclamation had been issued by the Governor-General of Canada, offering a reward for his apprehension;—yet, after his trial had commenced, the Law Officers of the Crown consented that he should be set at large upon bail. A similar application had been made at Montreal by the counsel for M'Lellan, but was refused by the Court. No bail was allowed at Quebec in the case of his accomplice De Reinhard; but it would appear that the Law Officers of the Crown had come to the determination of letting the whole weight of the prosecution fall upon De Reinhard, an unprotected foreigner, for the purpose of screening M'Lellan, a partner of the North-West Company.

When the trials were again brought forward, the prisoners were tried separately. That of De Reinhard came on first, and lasted eight days. He was

convicted of the murder. M'Lellan's trial then came on, and continued also several days. The conduct of the Crown Lawyers, throughout the whole of the trial, was such as fully to verify the apprehensions expressed by Lord Selkirk, in his letter to the Governor-in-Chief, of the 30th. of March, and M'Lellan—as might be expected—was acquitted.

The proceedings which took place at Québec in consequence of the Attorney-General having removed the trials from Montreal, being thus concluded, it will be necessary for me to point out to your Lordship the other prosecutions which, as in the case of Campbell, were directed to be transferred to the Courts in Upper Canada. This transfer included all the prosecutions instituted against the North-West Company prior to the month of September 1817. Their removal was determined upon, as I have already observed, without any communication to the prosecutors of such intention, or any permission given to them to state the numerous objections which obviously presented themselves against the measure. The nature of these objections will be best seen by a reference to Lord Selkirk's letter to the Governor of Canada, of the 11th of March, 1818, a copy of which is herewith enclosed, to which I particularly request your Lordship's attention.

Although the order for the transfer of these trials,

* See Appendix [H.]

from Montreal to Upper Canada, took place in September 1817; yet, as the witnesses for the prosecution of these cases were required in the various proceedings and examinations at Montreal and Quebec, it was impossible for them to attend in the Upper Province till after the end of May 1818, when the trials at Quebec were concluded. The Attorney-General of Upper Canada, having stated that it was probable a Special Court of Oyer and Terminer would be granted for these prosecutions, in the month of July, Lord Selkirk proceeded to York, with a number of witnesses required in the expected trials. On his arrival there, he was informed by the Attorney-General, that, in consequence of a promise made in the preceding month of April by the President administering the Government of Upper Canada, to the accused parties of the North-West Company, none of these cases would be brought to trial till the month of October. Lord Selkirk was thus placed under the further necessity of detaining his witnesses at a great expense, some of whom had been brought from the interior as far back as the year 1816; and it should also be noticed, that the Attorney-General of Upper Canada, acting upon the same unjustifiable principle as the Law Officers of the Crown in the Lower Provinces, took into his hands the exclusive management of these prosecutions, and announced to Lord Selkirk, that, upon the trials, the counsel for the prosecutor could not be permitted to assist in the examination, or cross-examination, of the witnesses.

Throughout the whole of this vexatious postponement of trials;—unnecessary transfer of prosecutions;—and arbitrary setting-aside of indictments, which had been regularly found by Grand Juries,—it is but too obvious, that the Law Officers of the Crown in Canada had some very different object in view than to promote the ends of justice. It is also important to remark, that, in their endeavours to retard or obstruct the prosecutions in question, they appear in several important instances, to have been thrown into no little embarrassment and dilemma.

In the first place, they seem to have been much puzzled to find out the meaning of the Canada Jurisdiction Act. It was only by this Act (43 Geo. III. c. 138,) that any authority was given to try, in the Courts of Lower Canada, offences committed in the Indian countries, or to permit such trials to be removed from the Lower to the Upper Province. With respect to the mode of effecting such removals, in the cases already alluded to, the opinions of the Law Officers of the Crown in Upper and Lower Canada, proved to be diametrically opposite. The Attorney-General of the latter province asserted, that it was not necessary for new bills of indictment to be found in Upper Canada, in order to have the prisoners tried there; but that it was sufficient to send up the bills already found in the Lower Province, annexing them to certain instruments under the Great Seal, (of the latter province,) as required by the Act. The Attorney-General of the Upper Province declared this not to be law, and that it

was necessary to have fresh indictments preferred against them, and that all the proceedings should begin *de novo*.

The next difficulty that perplexed them was how to send the prisoners to Upper Canada for trial. The Attorney-General of Lower Canada thought they had only to put them in charge of a constable, and send them off from Montreal in the one province, to York in the other. This the Attorney-General of Upper Canada maintained could not be legally done; and that the prisoners, if so removed, might, as soon as they passed the boundary line, obtain their liberation, by a writ of Habeas Corpus, issued by Chief Justice Powell, unless bills of indictment had previously been found against them by a Grand Jury of the Upper Province, and process issued in consequence.

Under this mode of proceeding, however, even supposing it to be legal, it was evident that the prisoners could not be tried in the same session in which the indictments were found; and that the witnesses sent to York, in support of the bills preferred before the Grand Jury, must either be detained there many months, or, if they returned to Montreal, have to make a second journey of several hundred miles to attend the trials at York. To obviate this delay and inconvenience, it was suggested by the prosecutor's counsel, that a warrant from the Governor-in-Chief to remove the prisoners, accompanied by affidavits exhibiting the grounds of detention, would be a sufficient authority to hold them in custody, in either province, until further

proceedings should be instituted against them in Upper Canada. To this measure—which had neither occurred to the one Attorney-General, nor to the other—they both assented; and the prisoners (that is to say, the only two who remained in custody, of about ten or twelve who had been apprehended) were accordingly removed, by such warrant, from Montreal in the Lower Province, to York in the Upper.

Although the Law Officers of the Crown, in both provinces, had thus, for once, agreed with each other upon a point arising from the Act of Parliament, the Chief-Justice (Powell) seemed disposed to differ from them both. When the prisoners arrived at York, he expressed his opinion, that, as no bills of indictment had been found against them in the province, they would be entitled to be liberated by writ of Habeas Corpus; and this liberation would, perhaps, have taken place, had not the two puisne Judges concurred in the opinion entertained by the Crown Lawyers:—in consequence of which the prisoners remained in custody.

But the most important point of difference between the Law Officers of the Crown still remained. This related particularly to the removal of the trials from the one province to the other. Several of the instruments required by the Act of Parliament for such removals, had been drawn up under the directions of the Attorney-General of Lower Canada, in such a manner as to remove to Upper Canada the trials of certain persons, “for all offences hitherto committed by them in the Indian territories.” The Judges of Upper Canada expressed their opinion, that a transfer

in these general terms was not such as the Act of Parliament authorised ; and that they could not take cognizance of any offence, which was not specifically described in the instruments directed by the Act.— This objection Lord Selkirk immediately communicated to the Attorney-General of Lower Canada, and pointed out the necessity of remedying the defect without delay, by the transmission to the Upper Province of instruments of a more specific description, as, otherwise, many of the cases referred thither for trial, would not be tried at all. Whether the Attorney-General of Lower Canada persisted in maintaining his opinion, in opposition to that expressed by the Court at York—or whether he thought fit to pay no further attention to the subject—does not appear. The objection had been communicated to him in the month of August ; yet, at the meeting of the Court at York, about the end of October, he had not adopted the necessary steps to prevent the evil which was apprehended.—What was anticipated has, in fact, taken place. The Court in Upper Canada has declared, that it cannot take cognizance of any charge against persons whose cases have been remitted to them in that general mode ; and the Court in Lower Canada has decided, that it cannot try the offences of any person, with respect to whom a reference to Upper Canada has been directed.

Among the prosecutions thus stifled is that for the conspiracy to destroy the Red River Settlement—a charge upon which the Grand Jury at Montreal had found a true bill against forty-three partners, clerks, and servants of the North-West Company. The

Attorney-General of Upper Canada has even declined to prefer indictments against these persons, because the instruments of transfer were irregularly drawn up by the Attorney-General of Lower Canada, who has taken no steps, however, to remedy the irregularity. Thus, owing to the negligence and misconduct of the Law Officers of the Crown, are criminal cases, of a most important nature—where numerous bills of indictment for capital offences had been found by Grand Juries in Canada—neither to be tried in the one province, nor the other*.

3rd.

The last class of prosecutions to which I have now to draw your Lordship's attention, is of those brought at the instance of the North-West Company against persons belonging to, or employed at, the Red River Settlement. The conduct of the

* A few of the cases referred from Lower to Upper Canada (where the instruments of transfer happened to be in the form approved by the judges of the latter province) were brought to trial at the assizes at York in the months of October and November last, but no distinct intelligence on the subject had been received in this country when this letter was transmitted to the Colonial Department. It appears, however, that the proceedings in these trials have been, if possible, even more extraordinary than those which took place in Lower Canada. Independent of various other unjustifiable circumstances, the Law Officers of the Crown (in the Upper Province) adhered to their determination of assuming to themselves the exclusive management of these prosecutions, and would not permit the counsel for the private prosecutors to cross-examine the witnesses.

Law Officers of the Crown, and of the Courts in Canada, with reference to this class, will be found to have been no less irregular and unjust, than that which they pursued in the cases of criminal prosecution, which have been already adverted to. They shewed now as much anxiety to harass and oppress the innocent, as they did before to screen and shelter the guilty. Upon this subject, it will be necessary to recal some of the earlier circumstances of these prosecutions to your Lordship's recollection.

Mr. Miles Macdonell, who had the charge of the Red River Settlement in the year 1813, and who also held the appointment, from the Hudson's Bay Company, of Governor of the District in which the Settlement was situated, was apprehensive that the settlers were likely, in the course of the following season, to be reduced to serious distress from want of provisions. It was ascertained that the utmost amount of the crop which could be raised by the new settlers that year, would not be adequate to their wants, and that they must therefore still depend in a great measure upon the natural resources of the country. Of these the North-West Company were maliciously endeavouring to deprive them, both by interrupting the hunters employed by the Settlement, and by buying up all the provisions they could procure from the native Indians, and to a much larger amount than what was requisite for the purposes of their own trade. Mr. Macdonell, being fully aware of their object, thought himself authorised, as Governor of the district, to prohibit the exportation of the provisions so collected. He accordingly issued a proclamation in the beginning of January 1814, limiting

this export to a quantity sufficient for the supply of the traders during their route to the respective places of their destination, and stipulating to purchase the surplus at the accustomed prices of the country.

No attention was paid to this prohibition on the part of the North-West Company, who openly declared their intention of carrying out the provisions in defiance of the proclamation. Mr. Macdonell, in consequence, granted a warrant to Mr. Spencer, who held the office of Sheriff for the district (under the authority of the Hudson's Bay Company's Charter) to seize the provisions which had been embarked for exportation; which was accordingly effected.

Several partners of the North-West Company had, by this time, assembled at Red River, and, after some ineffectual attempts to intimidate Mr. Macdonell, they proposed a compromise, agreeing, in the mean time, to submit to his authority as Governor of the district, but declaring that they would appeal to some higher tribunal, to ascertain the legality of the powers which he thus claimed. They then stated that it would be ruinous to their trade, if they were not allowed to export more than the quantity of provisions specified in the proclamation. Upon this, Mr. Macdonell agreed to allow them to export a larger quantity than that so limited, and the North-West Company on the other hand, stipulated, that in return for this accommodation, they would, in the course of the ensuing autumn and winter, procure and import into the district a quantity of provisions equal to the surplus which they were thus allowed to carry out. For the provisions thus to be imported,

as well as for that which had been detained; it was clearly understood that Mr. Macdonell was to pay in the manner specified in the proclamation.

The ensuing general meeting of the North-West Company at Fort William refused to sanction this compromise of their partners, and, instead of appealing to the King in Council, and calling in question, before a proper tribunal, the legality of the powers claimed by Mr. Macdonell, under the Hudson's Bay Company's Charter, they employed Mr. Archibald Norman M'Leod, one of their partners, a justice of the peace for the Indian territory, to issue a warrant for the apprehension of Mr. Macdonell and Mr. Spencer, both of whom, in order to avoid disturbance, but protesting against the jurisdiction, surrendered to the arrests.

Whether Mr. Macdonell's conduct in this business was proper or not, or whether, as a Governor regularly appointed under a Royal Charter, he was legally justified in adopting the step he took for the purpose of saving the inhabitants of the district, over which he was placed, from the probability of being starved, I shall not say; but although the North-West Company prosecuted him for the alleged offence, for upwards of three years successively, (and which prosecutions he was always ready and anxious to meet,) they have never been able, in any shape, either by civil or criminal process, to establish its illegality.

Mr. Spencer was arrested in September 1814, and in place of being conveyed down to Canada, he was detained at a trading post of the North-West Company till the following summer, nor was he brought

down to Montreal till he had been about twelve months in the private custody of that Company.

Mr. Macdonell surrendered himself in the month of June 1815, and was conveyed to Fort William, where he was detained till the end of the season. While at Fort William, and during his route, he was kept in rigorous confinement, and was not brought down to Montreal till after the close of the Criminal Court, held at that place in September. The agent of the North-West Company, who brought him down, had, on his arrival, the effrontery to tell him, that he never was his prisoner, and that he had only accommodated him with a passage (about two thousand miles) in his canoe. It was evident, that, having got Mr. Macdonell out of the country, where his presence might have assisted in the defence of the settlers, the North-West Company were very willing to drop all further proceedings; but finding that Mr. Macdonell was not at all disposed to suffer the matter to rest where it was, they got their partner, Mr. Norman M'Leod, to issue a new warrant against him. It deserves here to be particularly noticed, that it was not till this period that the North-West Company thought of making the seizure of their provisions the ground of a warrant for felony. The warrant under which Mr. Macdonell was arrested at Red River, was merely for a breach of the peace, grounded on the circumstance of his wearing arms, in a country where all the partners of the North-West Company constantly wear them.

Upon this new warrant for felony, Mr. Macdonell

and Mr. Spencer were compelled to give bail for their appearance at the ensuing term of the Court of King's Bench at Montreal, to be held in March 1816. In the mean time, the Company thought fit to consult their lawyers in this country on the subject; in consequence of which it appears that their agents in London, Messrs. M'Tavish, Fraser, and Co. and Messrs. Inglis, Ellice, and Co. officially apprised your Lordship, in February 1816, that "it appeared, from the best legal opinions in this country, it would be impossible to proceed further, as the defendants evidently acted under a misapprehension of authority; and that no sufficient proof could be adduced of a felonious intent." They added, that they had therefore lost no time in writing to Canada, in order that these criminal proceedings might be dropped. Whether their letter miscarried in its way to Montreal, or whether their correspondents thought "the best legal opinions in this country" not good enough for them, I know not;—but the agents there, in place of dropping, thought fit to persist in and to renew, these prosecutions for felony.

Mr. Macdonell and Mr. Spencer appeared at Montreal in March 1816, in pursuance of their recognizances, and were then prepared to take their trial; but the prosecutors were not ready. Further recognizances were required for their appearance in September, but that period was subsequently extended by the Attorney-General on their own application. No further proceedings took place till September 1817. For some time previous to that

date, both Mr. Macdonell and Mr. Spencer had been detained in the interior by the North-West Company, in pursuance of some other warrants obtained against them. In consequence of this detention, the former was prevented from appearing : Mr. Spencer, however, attended at the time appointed to take his trial, as did also several others who had been employed at the Settlement, among whom was Mr. Colin Robertson, who had seized their post at Red River, and against whom criminal proceedings had been instituted by the Company subsequent to those set on foot against Macdonell and Spencer.

All these parties now demanded their trial; and it seemed hardly possible that any further delay could take place to prevent their cases from coming on. The North-West Company, however, were too well aware that the trial of these parties would not only shew the futility of the charges, but would produce disclosures with respect to the Company's deeds in the interior, which ought, in their opinion, to remain in concealment. Their connections upon the Bench, therefore, stepped in to assist them in this perilous situation. One of the four Judges of the Court of King's Bench at Montreal was, at that period, in a state of suspension from the duties of his office; and when Mr. Spencer was brought up to be tried, two other of the Judges, Mr. Reid and Mr. Ogden, declared, from their seats on the Bench, that, owing to their intimate connection with the North-West Company, they could not, with propriety, sit in judgment upon any trial, or take part in any judicial proceedings, in which the interests of that association were involved;

or which arose from the disputes that were then pending. The only connection which, I believe, existed between these Judges and the North-West Company was, that the one was brother-in-law to Mr. William M'Gillivray, their principal partner and agent; and the other was, unfortunately, father of one of their clerks, (still in their service, and remaining at large in the interior,) against whom a true bill has been found by a Grand Jury for the atrocious murder of an Indian some years ago. In vain did the prisoners and their counsel entreat these judges to waive their scruples, urging that it was their duty not to leave the bench. Their delicacy appeared to overpower them; and so far, indeed, did they carry their sensibility and refinement, that they refused even to concur in taking recognizances, and in acting in other matters of an ordinary nature. They accordingly rose from the bench, and left the Court.—Your Lordship may recollect, that these were the two judges who, a short time afterwards, having got the better of their scruples, went to the gaol at Montreal, and effected Campbell's escape. The Chief-Justice being thus deserted by his brethren, there existed no longer a quorum; and the Court, as far as these matters were concerned, was broken up. The trials were postponed, and the prisoners still compelled to enter into recognizances for their future appearance.

As the Court of King's Bench at Montreal, had thus declared its incompetency to try cases in which the North-West Company were concerned, the prisoners addressed a petition to the Governor of Ca-

nada, requesting that he would issue a commission of Oyer and Terminer, for the purpose of trying them. A commission was accordingly granted—the same which has been already alluded to in the other classes of prosecutions; and it opened at Montreal on the 21st of February, 1818.

Seven bills were preferred before the Grand Jury of this Court on the part of the North-West Company, with the concurrence of the Attorney-General. They were all thrown out, except one against Mr. Colin Robertson, and four other persons for a riot, and for pulling down, in the month of June 1816, the fort and some houses which had been erected by the North-West Company, at the Forks of Red River, adjoining the Settlement. Of the remaining bills, five were against Mr. Macdonell; viz. three for false imprisonment, one for assault and battery, and one for stealing in a dwelling-house. These were all thrown out by the Grand Jury,—as likewise an indictment for murder preferred against Mr. Pritchard and two other settlers who had escaped from the massacre of the 19th of June, and whom the North-West Company had thought fit to charge with the murder of one of their half-breed servants,—the only person who fell upon their side on that occasion.

After a session of about a week, in the course of which no case was brought to trial, the Court of Oyer and Terminer was unavoidably adjourned, on account of the meeting of the regular term of the Court of King's Bench, which commenced on the 2nd of March. The bills of indictment which had

been found at the former terms of the Court of King's Bench at Montreal, could not, as already mentioned, be proceeded in, two of the judges having declared their incompetency to try them. To remedy this evil, the prisoners had obtained the appointment of the Court of Oyer and Terminer. But in place of the Attorney-General taking the means of removing their trials to that Court, he allowed that session (of the Court of Oyer and Terminer) to pass over without bringing forward any one of the cases in question; and at the next term preferred other and additional bills of indictment against them before the Court of King's Bench, which had publicly declared its incompetency to try them, and in consequence of which the other Court had been specially appointed.

It ought to be particularly noticed, that it was fully understood, that the Court of Oyer and Terminer had been granted for the express purpose of trying all the charges for offences alleged to have been committed in the Indian territories, in consequence of the disputes which had unfortunately occurred. Upon the Grand Jury of that Court there was not a person immediately connected either with the one party or the other, or who had the remotest interests in the concerns of either; while, on the other hand, in the Grand Jury of the Court of King's Bench there sat several partners of the North-West Company, and other persons connected with them in pecuniary interests, whom the Sheriff declared, in open Court, that he would not have summoned upon it, if he had supposed that any business

would have been brought forward in that Court, connected with the disputes, or prosecutions in question. The Attorney-General, however, presented to this Grand Jury numerous other bills against Mr. Macdonell, Mr. Colin Robertson, Mr. Spencer, and others, for offences alleged to have been committed in the Indian territories, and which, if found, must have again been sent for trial to a Court, which, by its own avowal, could not try them.

In consequence of this unjustifiable proceeding, eight bills were found by the Grand Jury. Of these it may be noticed that two (one, for assault, the other for stealing in a dwelling-house,) were found against Mr. Miles Macdonell,—the same having been thrown out, the week before, by the Grand Jury of the Court of Oyer and Terminer. Another of these bills was found against Mr. Spencer, for grand larceny, in seizing the North-West Company's provisions, formerly mentioned. The charge against Mr. Pritchard, and others, for the murder of the half-breed servant of the North-West Company, in the affair of the 19th June, (the indictment for which had been thrown out by the other Grand Jury) was again preferred by the Attorney-General,—but the accusation was so absurd, that even the Grand Jury of the Court of King's Bench could not maintain it, and threw out the bill.

This term of the Court of King's Bench also passed over without any of the prisoners being brought to trial under these new indictments; in consequence of which they again applied to the Governor of Canada, stating the hardship of their

case, and requesting that these new charges might also be referred to the adjourned Session of the Court of Oyer and Terminer, in order that they might be tried. On the subject of these applications, I must beg to refer your Lordship to the letter of Lord Selkirk, of 13th of April last (a copy of which is herewith transmitted) and which accompanied the petitions from the prisoners to the Governor-General of Canada*.

This application on the part of the prisoners was referred by the Governor to the Law Officers of the Crown, who gave no decisive answer on the subject, and when the adjourned Session of Oyer and Terminer met (4th May), the process of Court was served upon Mr. Robertson, Mr. Spencer, and the others, and they were in consequence arrested under the new indictments found by the Grand Jury of the Court of King's Bench. They were required to give bail for their appearance at the following term of that Court, to be held in September. This they peremptorily refused, and again demanded to be immediately tried before the Court of Oyer and Terminer. The Chief-Justice endeavoured to persuade the parties to give the bail as required, but they persisted in their refusal, and declared that they would go to prison, and remain there, till the Attorney-General thought fit to try them, rather than continue thus to give bail from March to September, and September to March, without any prospect of being

*See Appendix [I.]

finally discharged, or permitted to return to their homes and occupations.

In consequence of this refusal they were committed to prison by the Chief-Justice. They remained there several days, when the Attorney-General proposed they should be released, upon giving bail only for their appearance, from day to day, during the sitting of the Court, professing that it was altogether through mistake that they had been imprisoned, and that he had not intended to arrest them on the process of the Court of King's Bench. He added, that it had always been his intention to drop the prosecution of those indictments found in that Court against any of the persons who had petitioned to be tried before the Court of Oyer and Terminer, and that if they were not brought to trial in the course of that session, they should be wholly discharged.

The only case which he brought forward,—and that with evident reluctance,—was the bill of indictment, which had been found in the Court of Oyer and Terminer, in February, against Mr. Colin Robertson, and four other persons for the riot, and pulling down, in 1816, the fort, &c. of the North-West Company, adjoining the Settlement. — Their trial came on, and they were all acquitted.

The Attorney-General then, at the close of the session, officially announced, that he gave up all intention of any further prosecution of those charges brought by the North-West Company, with the exception of one, against some persons employed by the Hudson's Bay Company,—a case which was post-

poned, and, I believe, has been since abandoned. At least, it appears, that the accused parties presented themselves at the following term of the Court of King's Bench, held in September last, but the Law Officers of the Crown did not move to have their trials brought on, nor their recognizances renewed. Thus, at length, were the Law Officers of the Crown in Lower Canada, driven to abandon the harassing and vexatious prosecutions which remained unfried of all those which had been brought by the North-West Company, against persons employed at, and connected with, the Red River Settlement. These accusations would probably have still remained suspended over the heads of the parties, had it not been for the determined conduct of Mr. Robertson, Mr. Spencer, and other individuals, who rather chose to be committed to prison than to have their trials postponed from term to term, and from year to year, and thus to be held under perpetual recognizance. Among the charges for felony, which the Crown Lawyers were thus obliged to relinquish, were those against Mr. Macdonell, and Mr. Spencer, for the seizure of the provisions (in 1814,) in which case the legal advisers of the Company in England had told them, nearly three years before, that there existed no ground for a charge of felony.

Having now laid before your Lordship a general statement of the various prosecutions which have thus taken place in the Canadas, there are several cir-

circumstances attending them, which, I think, cannot fail to attract particular attention.

In the first place, in almost every case of criminal charge preferred by Lord Selkirk against partners, clerks, and servants of the North-West Company, true bills of indictment have been returned by the Grand Jury. Not only has this occurred in the Lower Province, but when the cases (without being brought to trial upon indictments so found) had been remitted to Upper Canada, indictments were likewise found upon the same charges by Grand Juries in the latter province. Of fifty-six persons, against whom capital indictments have been found, only seven have been brought to trial.

In the second place, of all the numerous charges and indictments brought by the North-West Company against Lord Selkirk, or his settlers, or persons employed by him, or connected with the Settlement, there is none which does not appear at this moment to have been either—dismissed by the magistrates,—thrown out by the Grand Jury,—disposed of by acquittals when the parties were tried,—or abandoned by the Law Officers of the Crown where no trials could be obtained by the parties accused.

These however are not the only important features in this case, which must strike every impartial observer. It appears incontrovertible, throughout the whole of these extraordinary proceedings, that the Judges, and Law Officers of the Crown, both in Upper and Lower Canada, have invariably shown a marked unwillingness to bring the charges—whether set on foot by the one party or the other—into the

decision of a Jury. The cause of this unwillingness must have been that they believed the charges brought by Lord Selkirk to be true, and suspected those brought by the North-West Company to be false. They must have foreseen that, if the matters in dispute came into open Court, where the production of evidence could not be avoided, disclosures would undoubtedly take place which [it would have been better for the North-West Company to have prevented:—For although, in the criminal charges preferred against them by Lord Selkirk, no effectual cross-examination of the witnesses was to be expected after his own counsel were interdicted from sharing in the principal management of the trials, yet the Company could not but be apprehensive that enough would transpire to do them serious mischief. Wherever, therefore, it could be effected, the Crown Lawyers, and the Courts in Canada, put off the cases from being brought before a Jury, shewing themselves equally anxious to prevent those accused parties from being put upon their country, who were eager to be tried, and those who wished to evade a trial.]

It will also naturally occur to any person, who attends to the nature of these proceedings, to ask what motive could induce persons, holding, in Canada, the official situations of Law Officers of the Crown, to conduct themselves in the manner I have described. To this an answer may in part be given, by stating, (what I already in some degree adverted to,) that it is generally understood throughout that colony, that several of these Crown Lawyers, and persons authorised by them to act officially on their

behalf, were professionally retained by the North-West Company. The correctness of this allegation, I presume, it may be in your Lordship's power to ascertain; and, if the fact be as stated, strict impartiality could hardly be looked for from Law Officers in that colony who were so situated.—An Attorney or Solicitor-General in Canada, holding even a general retainer from such a body as the North-West Company, could scarcely be expected to prove himself a very active or zealous public prosecutor, in cases where the principal partners of that Company were indicted. But, at all events, the Law Officers of the Crown ought never, in such cases, to have prevented the counsel of the private prosecutor from assisting in the active and ostensible management of the trials.—The right of a private prosecutor in this country to employ his own counsel was, I presume, never disputed; and even if any doubts had really prevailed as to the existence of a similar right in Canada, these doubts ought not to have been permitted to operate so as to exclude the prosecutor's counsel from participating in the conduct of trials where the Crown Lawyers, prosecuting on behalf of the King, were in any shape connected with the parties accused.

But this circumstance could not of itself have been the cause of all that train of judicial oppression which appears to have taken place in Canada. There seems to have existed nothing short of a general confederacy among the principal Judges, the Commissioners of Special Inquiry, the Law Officers of the Crown, and persons acting under their sanction; and it is impossible,

upon considering the whole of their proceedings, and conduct with respect to Lord Selkirk, to doubt that the main and primary cause of the improper transactions which took place, must be looked for in the Proclamation which Sir John Sherbrooke issued at Quebec, in May 1817, by directions from the Colonial Office in England, and in the Dispatch transmitted from the same Department, on the 11th of February of that year.

On the subject of the Proclamation, I took the liberty of making a few remarks, in my letter to your Lordship of the 18th of July, 1817. With respect to the Dispatch of February, I must be permitted to take this opportunity of making some observations.

When your Lordship, in that Dispatch, stated that you were fully sensible of the danger which might result, from Lord Selkirk's conduct, to the commercial and political interests of Great Britain, it may fairly be presumed, (at least it is difficult to affix any other meaning to that part of the Dispatch,) that your Lordship's apprehensions originated from Lord Selkirk having effected an establishment of settlers at Red River;—but, if so, it may be asked, why were these objections not stated to Lord Selkirk at the time he was commencing that establishment? Your Lordship was, from the first, both personally and officially informed of the purpose for which Lord Selkirk had obtained a grant of land from the Hudson's Bay Company, and of the local situation of the Settlement he intended to establish.

Soon after its commencement, your Lordship directed arms and ammunition to be issued for its defence; and afterwards instructed Sir Gordon Drummond, then commanding the forces in Canada, to give such military protection to the settlers as could be afforded without detriment to His Majesty's service in other quarters.

It is evident therefore, that, a few years ago, your Lordship could not have been of opinion, that Lord Selkirk, in supporting his Settlement, was putting in danger the commercial and political interests of his country; and if, at any time subsequent to that period, his conduct appeared to your Lordship to justify that opinion, Lord Selkirk ought to have been apprised of the change in your Lordship's sentiments, and of any objections which His Majesty's Government, either in a political or commercial view, might have entertained on the subject. But, of these objections Lord Selkirk knew nothing till he read them in the Dispatch which had accidentally fallen into his hands,—and by which it appeared, that a marked stigma had been fixed upon him, without the slightest opportunity having been afforded him of being heard in his defence.

But this charge is not the only one which has been thus officially pronounced against Lord Selkirk.

“By resistance to the execution of the warrants issued against him,” says the Dispatch, “Lord Selkirk has rendered himself doubly amenable to the laws; and it is necessary, both for the sake of general principle, for the remedy of existing, as well as for the prevention of farther evils, that the

“determination of the Government to enforce the
 “law with respect to all, and more particularly with
 “respect to Lord Selkirk, should be effectually and
 “speedily evinced. You will, therefore, without
 “delay, on the receipt of this instruction, take care
 “that a bill of indictment be preferred against his
 “Lordship, for the rescue of himself, detailed in the
 “affidavit of Robert M^r Robb,” &c. &c.

On the subject of these heavy accusations the Bench of Magistrates at Sandwich, in Upper Canada, were certainly much better informed than the Colonial Department in England. Although the latter had, on a charge grounded upon the affidavit of Robert M^r Robb, declared that Lord Selkirk had rendered himself “doubly amenable to the laws”—the former were satisfied with binding him in a recognizance of fifty pounds for his appearance to answer the charge,—and when it was afterwards brought forward in the shape of an indictment, as specially directed by the Dispatch, the Bill was, without hesitation, thrown out by the Grand Jury.

May I be permitted to ask your Lordship how the affidavit of Robert M^r Robb came into the possession of the Colonial Department? That document purports to have been sworn to before the Commissioners of Special Inquiry, at York, in Upper Canada, upon the 17th of December, 1816. Between that period and the date of the Dispatch in which it is noticed, there was scarcely time for its arrival through the regular and official channel—the Provincial Government of Lower Canada. These Commissioners held their appointment and instructions from the

Governor of Quebec, and to him, of course, were all their official Reports and Communications to be addressed. Sir John Sherbrooke surely would not transmit this solitary affidavit, or any selection of *ex parte* depositions on behalf of the North-West Company, after he had named Special Commissioners fully and fairly to investigate the whole subject. But these Commissioners had not even entered upon any examination, or taken one single deposition of persons belonging to the opposite side, at the time when M'Robb's affidavit is stated to have been sworn to, or even at the date of the Dispatch in which it is noticed. If the Commissioners reported upon the subject of M'Robb's affidavit, before they took any evidence, except what was produced by the North-West Company, they acted with gross impropriety; and, if without reporting to the Governor at Quebec, they took upon themselves to transmit such *ex parte* evidence to the Colonial Department, (direct from York, by the less circuitous route of the United States) they must have had some improper motive in so doing, and the Document they so transmitted, ought to have been received, and viewed in your Lordship's Office, with care and circumspection.

If, on the other hand, the affidavit came into the Colonial Office through some private and unaccredited channel, it was still more requisite to have been cautious in the use which was to be officially made of it. I must mention to your Lordship that, some time afterwards, Mr. Fletcher expressly refused to allow Lord Selkirk's witnesses to have copies of the affidavits made by them, declaring that they (the Commis-

sioners) had invariably adhered to a regulation made by them, that no copy of any of these documents should be allowed. The regulation was a very foolish one, but if it was to be adhered to, it should, of course, have been held equally applicable to the one party, as to the other. This, however, could not have been the case, because about the very same moment that Mr. Fletcher was declaring in Canada that no copies of affidavits attested by the Commissioners had been allowed to either party, the North-West Company's agents in London were publishing M'Robb's affidavit. This document, therefore,—whether as an original, or a copy, must (if it was produced to the Colonial Office through any private channel) have been improperly given, or surreptitiously obtained. Be that, however, as it may,—whether it came officially through the Provincial Government of Canada,—or directly, but irregularly, from the Commissioners themselves,—or surreptitiously through the hands of some agent of the North-West Company, at all events it ought not, without further and fair inquiry, to have been made the ground of heavy charges against any man, much less of official instructions to arrest, indict, and prosecute him.

Before I take leave of Robert M'Robb, it may be proper to mention some circumstances which your Lordship has probably not been made aware of. In the affidavit transmitted to the Colonial Office, he was prudently made to omit any notice of who, or what, he was. This was not M'Robb's usual practice, because I observe in other affidavits made by

him, both before and after the one in question, that he was in the habit of beginning what he had to depose by describing himself as a "clerk in the employ of the North-West Company," or, what was the same thing, "a clerk of the House of Messrs. M'Tavish, M'Gillivray's and Co's." The omission in the affidavit transmitted to your Lordship was evidently not accidental. In fact, M'Robb is employed in the same office with M'Tavish and Vandersluys, and he appears to be well qualified to assist them in a very important branch of the Company's service:—While the two former were qualifying themselves to be indicted for perjury, by swearing that Lord Selkirk had feloniously stolen eighty-three Indian fusils, the latter was preparing the affidavit which was to be transmitted to England, for the purpose of forming the ground-work of that train of persecution which Lord Selkirk has met with in Canada.

When the deserters from the Red River Settlement were brought down, in the year 1815, to Fort William, by the North-West Company, various sums were paid to them by the partnership as bribes and rewards for their services in robbing their fellow-settlers, attacking them with fire-arms, and burning their houses. For these services they have been remunerated by the North-West Company, and indicted by a Grand Jury. A regular book was made out in the Company's office at Fort William, indorsed "Red River and Colonial Register," in which, (as mentioned in my letter to your Lordship of the 23rd

of August, 1817,) the sums paid, or credited, to these men were entered,—some for articles which they had stolen from the Settlement—others as distinct bribes and rewards for their activity and exertions in its destruction. The two clerks, through whose hands most of these sums were paid, and whose handwriting appears throughout this book of account, as noting the sums and marking the payments, were M'Tavish and M'Robb,—and it is upon the assertions of such men that your Lordship has been pleased, in an official Dispatch, to brand the character and conduct of several individuals, and to direct criminal prosecutions to be instituted against them.

On the subject of the Dispatch I ought also to observe, that, although it stated that it was “the determination of the Government to enforce the law with respect to all, and more particularly with respect to Lord Selkirk,” it is evident from the conduct of the Law Officers in Canada, that they must have construed this instruction to mean, that Lord Selkirk and those connected with him,—particularly some reduced Swiss officers, who had been long and meritoriously employed in the British service,—were to be prosecuted, but no one else. The Dispatch, indeed, did truly state the necessity of putting an end to a system of lawless violence which had too long prevailed in the interior: but has the proper mode been adopted to put an end to that system?—A number of British colonists, who were cultivating their farms and peaceably establishing themselves in the interior, with the knowledge and consent of Govern-

ment, were attacked by a mercantile association of their fellow-subjects, supported by their half-breed clerks and servants. They were plundered, fired at, some of them severely and one of them mortally wounded, and were obliged to abandon their lands, after their houses were burnt to the ground. Some time afterwards these settlers returned, and were employed in the cultivation of their allotments, when the same association again attacked them, but in greater force,—a force composed of armed agents, partners, clerks, magistrates, and other half and whole-breed retainers of the North-West Company. Again were the settlers plundered of their property and provisions, their crops destroyed, their houses reduced to ashes, and, after Governor Semple and about twenty of the principal people of the colony, were butchered by their assailants, the rest of them were again driven off, with their families, from the Settlement. All this lawless violence was fully known to the Crown Lawyers in Canada, and they could not but be aware that the circumstances had been laid before His Majesty's Government. But, finding that no particular notice was taken of the capital crimes charged against the North-West Company, while the most marked and minute instructions were sent out how to prosecute Lord Selkirk and his friends, (upon a charge, which, even had M'Robb's testimony been deserving of credit, only amounted to a misdemeanour,) the Law Officers of the Crown thought themselves at liberty to interpret the Government dispatches in their own way, and concluded,—not without some

shew of reason,—that the Colonial Department was not very anxious about molesting the North-West Company, but extremely eager to prosecute Lord Selkirk and his friends.

Your Lordship must also permit me here to advert to the letter which Mr. Goulburn was directed to address to me on the 1st of September, 1817; in which I was told, that, being aware of the objections which might be taken to the Courts of Canada, your Lordship had done every thing in your power to facilitate the trials of the questions at issue in this country. This was certainly most satisfactory information at that time; because the bringing those trials to England, from the objectionable Courts in Canada, appeared to be the most likely mode in which substantial justice could be obtained. But how is the assertion, contained in Mr. Goulburn's letter, to be reconciled with the purport of the Dispatch of the 11th of February?—"You will, without delay," says the Dispatch, "on the receipt of this instruction, take care that an indictment be preferred against his Lordship for the rescue of himself, detailed in the affidavit of Robert M'Robb; and upon a true bill being found against him, you will take the necessary measures in such cases for arresting his Lordship, and bring him before the Court from which the process issued."—And, throughout the sequel of the Dispatch, this instruction was followed up by a minute and circumstantial detail of directions how these criminal proceedings ought to be carried on against

Lord Selkirk in Canada ;—how the Act of Parliament, brought in by the North-West Company's agents, was to be interpreted in his case ;—how the Canadian Magistrates, in order to apprehend him, might grant one sort of warrant, or back another ;—how process of court was issuable, and how returnable ;—in short, how constables might catch, and Attornies-General indict him. If, however, any subsequent measures were taken to prevent the injustice which might arise from the directions thus issued on the 11th of February, and any counter-instruction sent out in consequence of the objections felt with respect to the Courts at Canada, as admitted on the 1st of September,—those measures ought to be communicated to Lord Selkirk. An individual, who has suffered so unjustly from criminal proceedings in Canada, sanctioned by the Dispatch of February, ought in fairness to be informed what facilities had been afforded for the removal of the trials to England, as stated in the official Letter of September. But your Lordship will observe, that, long after the date of Mr. Goulburn's letter, the Crown Lawyers in Canada avowed that they were then acting in these prosecutions by the express directions of the Secretary of State. Even up to the present moment, they appear to have kept in constant view what they supposed to be the real intention of a Dispatch which they took such pains to conceal, and at the discovery of which they were so much alarmed, and they have, in consequence, adhered, and I believe, do still adhere, to a system of persecution, which,

if they had not persuaded themselves that it met the wishes of the Colonial Department, they would hardly have dared to support.

The circumstances which I have thus, at full length, detailed to your Lordship, are certainly such as to merit most serious consideration. The length to which the detail has led me, must be ascribed to the important matter which it embraces, and not to any wish, on my part, unreasonably to intrude upon your Lordship's time. However incredible the occurrences which I have noticed may seem to be, they have, to the best of my belief, been stated faithfully, and without exaggeration. Lord Selkirk pledges himself to produce unquestionable proof in support of all that I have asserted, in this, as well as in my former letters. I have only to except two unimportant mistakes, in those of the 18th and 31st of July, 1817. In the former, I mentioned that Government had issued arms and ammunition for the protection of the Red River Settlement in 1814; I should have said 1813: and in the latter I also fell into an immaterial error with respect to one of the numerous warrants issued for Lord Selkirk's apprehension. In the printed Statement, which was transmitted to your Lordship (with my letter of 10th of July, 1817), I likewise find there is a mistake, which must have arisen from the information transmitted at the time from Montreal. In page 165 of the Statement, Charles de Reinhard, since convicted of the murder of Mr. Keveney, is said to have been apprehended in consequence of Lord Selkirk having

given directions, at Fort William, to Captain D'Orsonnens, to arrest him. The murder, however, was not known at Fort William when that gentleman left it, but intelligence having been given to him before he reached Lac la Pluie, he took the necessary means, and succeeded in apprehending the murderer.

Upon a review of all the documents which I have transmitted to the Colonial Office on the subject of Lord Selkirk's affairs, and of the whole proceedings which have taken place with respect to him, it is evident that he has been treated with marked and signal injustice,—and it cannot be expected that a man who has been so injured, is to sit tamely down, and have his rights of property trampled upon, and, what is of more importance, his character wantonly traduced. In his absence, and without his knowledge, I did every thing in my power to warn your Lordship, as Secretary of State, against lending too willing an ear on these subjects, to the interested representations of partners and agents of the North-West Company, or to the fabrications of such men as Vandersluys, M'Tavish, and M'Robb. If my communications were not thought worthy of implicit reliance, they ought, at least, to have induced your Lordship to have paused, and to have instituted some more careful and strict inquiry. It may, perhaps, be not yet too late to commence impartial investigation, and, by ascertaining the real source of past crimes and disturbances in the interior of British

North America, to adopt effectual means of preventing the possibility of their recurrence.

I have the honour to be,

My Lord,

Your Lordship's obedient

And humble Servant,

Earl Bathurst,

J. HALKETT.

&c. &c. &c.

Downing Street, 9th February, 1819.

SIR,

I am directed by Lord Bathurst to acknowledge the receipt of your letter of the 30th ultimo, and to acquaint you, in reply, that although it inculcates, in a charge of prejudice and injustice towards Lord Selkirk, all the high official authorities in Canada, many of whom cannot be suspected of having been misled by personal interest, or partial affection; and although there are several statements in it founded on a misapprehension of what has passed,—yet, as it contains matter of much grave charge, Lord Bathurst will transmit a copy of it to the Governor-General, directing his attention to those parts which appear to require more particular inquiry and explanation.

The paper which purports to be an extract of Lord Bathurst's Dispatch of the 11th of February, 1817, is not only in the passages which you have marked,

but in many other respects, very inaccurate. Upon intelligence received, that Lord Selkirk had resisted a warrant, Lord Bathurst thought it his duty to direct an indictment to be laid against his Lordship for such resistance—considering that his Lordship's rank and situation in life afforded additional reasons for requiring from him an obedience to the laws.

It having been further represented, that doubts existed in what manner the law could reach his Lordship, should he withdraw out of the provinces of Upper and Lower Canada, but remain, nevertheless, within the other British dominions in North America,—Lord Bathurst, after consultation with His Majesty's Law Officers, detailed in the Dispatch of the 11th of February the proper measures to be taken under those circumstances, in the event of the indictment being found. The Dispatch referred to directed no other prosecutions against his Lordship; and Lord Bathurst does not think it necessary to enter into further explanation of the paper, more particularly considering the manner in which Lord Selkirk obtained possession of it.

I am, Sir,

Your most obedient Servant,

HENRY GOULBURN.

J. Halkett, Esq.

Seymour Place, 11th February, 1819.

MY LORD,

I have had the honour of receiving Mr. Goulburn's letter of the 9th instant, in answer to that which I addressed to your Lordship on the 30th ultimo; and, as Mr. Goulburn mentions that my communication inculcates all the high official authorities in Canada, it appears requisite, that, on so important a subject, I should not, in any degree, be misunderstood.

There is no intention, on my part, to inculcate every high official authority in Canada, or to include, in charges of prejudice and injustice against Lord Selkirk, the innocent with the guilty. The public officers against whom these charges are specifically pointed, are, the Commissioners of Special Inquiry, the principal and some other Judges, and the Law Officers of the Crown.

With respect also to that part of Mr. Goulburn's letter, which states that the paper purporting to be an extract of the Dispatch of the 11th February, 1817, is very inaccurate,—it is evident that Lord Selkirk cannot be held responsible for such inaccuracy. The original he never saw; nor did he think it worth his while to retain the copy (in the handwriting of the Advocate-General of Quebec) which had come into his possession, and which, under the extraordinary circumstances of his case, he might have been justified in retaining.

It cannot be doubted, however, that the copy taken by Mr. Pyke may be deemed sufficiently accurate to satisfy every impartial person, that the directions given for indicting Lord Selkirk were founded upon *ex parte* intelligence, communicated by Robert M'Robb, the hired clerk of his inveterate enemies.

I have the honour to be,

My Lord,

Your Lordship's obedient,

and humble Servant,

J. HALKETT.

Earl Bathurst,
 &c. &c. &c.

1917-1918

1919-1920

1921-1922

1923-1924

1925-1926

1927-1928

APPENDIX.

[A.]

Information of J. Vandersluys, and J. C. M'Turish.

*Upper Canada,
Western District. }
Sandwich, to wit.*

JASPER VANDERSLUYS, and
James Chisholm M'Tavish, late of
Montreal, and now of Sandwich,

in the Western District of the province of Upper Canada, gentlemen, being duly sworn on the Holy Evangelists, severally make oath, and say, that on the 14th day of August last past, one Thomas Douglas, commonly called the Earl of Selkirk, Frederick Matthey, Prothée D. Odet D'Orsonnens, John M'Nab, Donald M'Pherson, G. Adolph. Fauche, John Allan, Miles Macdonnell, John Spencer, Frederick de Graffenreid, together with a party of armed people, to the amount of fifty and upwards, and to these deponents unknown, did forcibly and violently by means of arms enter a place called Fort William, in the Western District, Upper Canada, being the principal trading post of a Company of Merchants, known under the firm of the North-West Company, who had appointed these deponents to superintend and direct their trade at the aforesaid place, called Fort William. That the aforesaid Thomas Douglas, commonly called the Earl of Selkirk, Frederick Matthey, Prothée D. Odet D'Orsonnens, and the others aforesaid, with the aid of the said armed force, did then and there feloniously steal, take and carry away eighty-three fusils, of the value of £. 250 money of Great Britain, of the goods and chattels of the Honorable William M'Gillivray, Simon

M'Gillivray, Archibald Norman M'Leod, (and others*),
being the partners composing the firm of the said North-
West Company.

J. VANDERSLUYS.

J. C. M'TAVISH.

Sworn before us, this 19th
day of October, 1816;

FRANCIS BABY, J. P. W. D.

J. Bte. BABY, J. P. W. D.

GEORGE JACOB, J. P. W. D.

[B.]

Affidavit of Hector M'Eachern.

District of HECTOR M'EACHERN, of the city of Mon-
Montreal. treal, in the district of Montreal, yeoman,
being duly sworn upon the Holy Evangelists, deposeth and
saith, that from the year 1812 to the spring of the year
of 1815, this deponent was one of the servants of the colony

* Thomas Fraser.	David Thomson.	Angus Bèthune.
John M'Tavish.	J. Duncan Cameron.	Sir Alex. M'Kenzie.
Henry M'Kenzie.	John Thomson.	John Inglis.
Daniel M'Kenzie.	Arch. M'Lellan.	Edward Ellice.
John M'Donald.	Ronald Cameron.	J. Bellingham Inglis.
John M'Donell.	Robert Henry.	James Inglis.
Alex. M'Donell.	Arch. Stewart.	Thomas Forsyth.
Alexander Fraser.	J. Dugald Cameron.	John Richardson.
Æneas Cameron.	John Stuart.	John Forsyth.
Duncan Cameron.	George Leith.	John Mure.
James Hughes.	J. G. M'Tavish.	Pierre Rochblave.
Hugh M'Gillis.	Edward Smith.	John M'Donald.
John M'Gillivray.	Alex. M'Donell.	James Leith,
James M'Kenzie.	John M'Laughlin.	and
Simon Fraser.	James Keith.	John Haldane!

established at Red River, in the Hudson's Bay, by the Earl of Selkirk. That this deponent knew at Red River aforesaid, one George Campbell, and others, who were colonists there; that the said George Campbell for about a couple of months previous to the departure of this deponent from Red River, resided at the North West Fort, called Fort Gibraltar, in the vicinity of the Settlement, at which Duncan Cameron, one of the North-West Company, commanded.—That the said George Campbell used occasionally during his residence at the said fort, to sally out from thence at the head of armed men, servants of the North West Company, and others, and alarm and attack the colonists, at Red River aforesaid. That the said George Campbell was not a servant of the North-West Company, but a settler at the colony aforesaid. until he went to Fort Gibraltar as aforesaid.—That this deponent knows not any other acts or business performed by the said George Campbell, in the service of the said North-West Company, than the acts of hostility against the said colony, committed by the said George Campbell, and others, under his command.—That this deponent never saw any silver money, or dollars, at Red River aforesaid, and that there was no occasion for coin there.—That this deponent arrived some time about the month of August 1815, at Fort William aforesaid.—That subsequent to the arrival of this deponent at Fort William, the said George Campbell and other colonists arrived there in the canoes of the North West Company.—That the said George Campbell was well received by the partners or proprietors of the North-West Company, who were present at his arrival, and shook hands with him.—That the said George Campbell was in the habit of dining with the said partners, at Fort William, during his stay there.—That the colonists were not generally admitted to the table of the partners, at Fort William, but that this was a mark of distinction conferred only on the said George Campbell, and two others, to wit, John Matheson, and Angus Sutherland.

That this deponent saw money paid to divers of the said colonists, while he was at Fort William, as aforesaid.—That the money was generally paid by Keneth M'Kenzie, one of the partners or proprietors of the said North-West Company.—That about the end of August, or the beginning of September, this deponent and the said George Campbell, and other colonists, quitted Fort William, to embark on board a schooner, belonging to the said North-West Company, of which a person of the name of M'Cargo was captain, for the purpose of being conveyed to Sault St. Marie, and that others of the said colonists, were sent to the same place in boats, belonging to the said North-West Company.—That while this deponent, and the said George Campbell, were on board the said North-West schooner together, the said George Campbell counted out in the presence of this deponent a number of dollars, and also exhibited to this deponent a draft, which he stated was for the sum of £.100, and mentioned that he had received the said money and draft from partners of the North-West Company, at Fort William, and informed this deponent, that it were for his good behaviour to them at Red River he had received the same.—That this deponent never saw the said Campbell in possession of any money previously, but that he told this deponent he had left all his money at home, meaning Great Britain, with the Earl of Selkirk.

That the said George Campbell also informed this deponent that he was present, and commanded several people who burnt the houses of the colonists at Red River, some time in June 1815; and this deponent doth verily believe, that it was for the conduct of the said George Campbell, in attacking and driving off the colonists, and burning their houses at Red River, that he received the money and draft above mentioned by this deponent. The book entitled "The Red River and Colonial Register, 1815," beginning with the account of "Niel M'Kinnon" and ending on the last written page thereof, with the account of "John

Mohony," being now exhibited to this deponent, he saith, that he saw a book very similar, and which he believes to be the same as the one now exhibited to him, in the possession of Duncan Cameron, one of the partners of the North-West Company at Fort Gibraltar, aforesaid.—That this deponent doth not recollect having seen the said book while he was at Fort William, as aforesaid, nor at any time since he saw the same in possession of Duncan Cameron, until the present time.—That amongst the persons who received money at Fort William aforesaid, were Hugh Swords, James Golding, and John Mohony, as this deponent believes, but he cannot positively charge his memory with the particulars, as there were a great many of the colonists paid on the same day.—That this deponent hath no knowledge of any services rendered by the said Hugh Swords, James Golding, or John Mohony, to the North-West Company, otherwise, than in committing acts of hostility against the colonists at Red River, and believes that it was for these acts that they were so rewarded.

HECTOR M'Eachern,

Sworn at Montreal, this 15th

day of April, 1817, before me,

THOMAS M'CORD, J.P.

[C.]

Affidavit of Philip Leyden:

District of PHILIP LEYDEN of the city of Montreal, in
Montreal. } the district of Montreal, yeoman, being duly
 sworn upon the Holy Evangelists, deposes, and saith, that
 he was a servant at the colony, established by the Earl of
 Selkirk, at Red River, in the territories of the Hudson's Bay
 Company, and resided there from the year 1812, to the
 spring of the year 1815.—That in the month of June 1815,

various attacks were made upon the colonists, and that they were fired upon in their houses by a body of armed men, servants of the North-West Company, and others, who resided at a fort of the said Company called Gibraltar, in the neighbourhood of the said colony; that he knows one George Campbell, one of the settlers of the said colony, at Red River, who, in the spring of 1815 left his habitation, at the said colony, and went to reside at the said North-West Fort called Gibraltar.—That this deponent also knows one Hugh Swords, one James Golding, and one John Mohony, who, like this deponent, were servants at the said colony, who in the spring of 1815, left their service, and went also to reside at the said fort.

That the said George Campbell was one of the leaders in several of the attacks upon the said colony.—That the houses of the colonists were set fire to, and burnt, in the said month of June 1815, by a party of men from the said North-West fort.—That the said George Campbell, was also present and concerned in the burning of the said houses.—That the said Hugh Swords, James Golding, and John Mohony were also present, armed with guns or muskets, and concerned in the attacks that were made upon the colonists as aforesaid in their houses, by shooting at them.—This deponent knows not of any other services which the said George Campbell, Hugh Swords, James Golding, and John Mohony had rendered to the North-West Company, excepting only their endeavours to expel the colonists in their attacks upon them in their houses, of which he has before spoken.—That this deponent hath heard the aforesaid persons speak of the services they had rendered to the North-West Company, and never heard them speak of any other services rendered the said North-West Company than those he hath already stated.—That he also heard them say, that they should be well rewarded by the North-West Company, for their trouble.—That this deponent hath also heard the wife of the said George Campbell state, that the said George

Campbell was to come to Canada, where the North-West Company would enable him to live like a gentleman.—That amongst the arms employed against the colony by the North-West Company, were some cannon or pieces of artillery, which had been robbed from the stores of the said colony.—That the said Hugh Swords was appointed captain of one of these cannon, with three men under him to obey his orders, by Alexander M'Donell, one of the partners of the North-West Company.—That the said Alexander M'Donell had established a camp at a place called Frog Plain, within about three or four miles of the said colony.—That the said Alexander M'Donell afterwards, in the month of June 1815, with all his force of men and artillery, moved up to the said colony, and erected a battery against the house, called the Government House, and planted on the said battery four pieces of artillery, part of which had been robbed from the colonial stores.

That while the said Alexander M'Donell was encamped at Frog Plain, as aforesaid, the European cattle, belonging to the said colonists, were seized by the said Alexander M'Donell's party, and one of these killed in the presence of this deponent, and this deponent believes that the rest of them were all afterwards slaughtered by them.—That while they were so encamped at Frog Plain, one of the colonists, to wit, Duncan M'Naughton, who, as this deponent was informed, was killed in June last, at Red River aforesaid, came from the Settlement to demand the said cattle, which were refused.—That the said Duncan M'Naughton then departed, and having no other arms about him but a pistol, after he had got beyond pistol-shot, fired the said pistol into the air, pointing it upwards.—That thereupon the said Alexander M'Donell gave orders to his men to shoot, and kill the said Duncan M'Naughton, and that ten guns or muskets were immediately aimed and discharged at the said Duncan M'Naughton, who, however, escaped.—That amongst the persons who aimed his piece at the said Duncan

M'Naughton was one John Early, whose gun missed fire, at which the said Early said he was sorry, for he should surely have killed the said M'Naughton, as his gun was loaded with two balls.

That while the said Alexander M'Donell was encamped at Frog Plain as aforesaid, one John Smith and his family, consisting of his wife and five or six children, were surprised taken prisoners, and carried down to the encampment, where a man with a drawn bayonet was placed over them as centinel, by the joint orders delivered in the hearing of this deponent, of the said Alexander M'Donell and Duncan Cameron, another of the partners of the said Company, who generally commanded at Fort Gibraltar aforesaid.—That while the said John Smith was in confinement as aforesaid, the said Alexander M'Donell, in the hearing of this deponent, told the said John Smith “That he should not stay at Red River as a colonist, but that he should either go to Canada, or quit that country for some other place.—That he, the said John Smith, if he should go to Canada, would get a great many acres of land given to him, and that he might earn by his labour three or four dollars a day. That Canada was a much finer country than Red River, and that if he, the said John Smith, remained there, he would be all his days in poverty, but that he, the said Alexander M'Donell, was determined that there should be no colony at Red River.—That he, the said Alexander M'Donell, would drive off every single settler from the land, and would never allow any of them to come to Red River again, and would burn the houses to the ground before he left Red River.” That the said John Smith then replied, he should like to stay at Red River, if he should be allowed, but that if he were taken away he could not help it.

And this deponent farther saith, that the lands at Red River are clear by nature, and that the soil is better, and the climate much milder than in Canada.—That the said

George Campbell, John Smith, John Early, Hugh Swords, James Golding, and John Mohony were, after the month of June 1815, together also with a number of other colonists and servants of the colony, taken in the canoes of the North-West Company to Fort William, a fort belonging to that Company on Lake Superior.—That there was no money at Red River, as this deponent ever saw, and that until he arrived at Fort William he had not seen a dollar.—That this deponent remained some weeks at Fort William with the colonists and servants whose names he has mentioned, and other colonists and servants: and that while this deponent was at Fort William, the said George Campbell was treated with particular distinction there, and this deponent hath seen him walking arm in arm with some of the partners of the said Company.—That while this deponent was at Fort William as aforesaid, which he believes to have been in and about the month of August 1815, sums of money in dollars were paid to divers of the colonists and servants of Red River, and amongst those who received monies were the said George Campbell, John Early, Hugh Swords, James Golding, and John Mohony.—That this deponent hath a knowledge of almost all the services which the said last above-mentioned persons could have rendered to the North-West Company from the time of their joining them, in 1815, and knows of no services which they have rendered to that Company, unless the various attacks upon the colonists who were well-disposed, the slaughtering their cattle, and burning of their houses be considered as services.—That the sums of money paid to the said George Campbell and others last above-mentioned at Fort William, were generally paid them, as far as this deponent can recollect, by Kenneth McKenzie, one of the partners of the North-West Company, at his office or counting house at Fort William.—That other partners were occasionally present there when the payments were made, whose names this deponent cannot now recollect.—That the said settlers and servants were

afterwards conveyed in batteaux, and a schooner belonging to the North-West Company, to Sault St. Marie, in Upper Canada.

The deponent declares he cannot write, and sets his mark to the contents of the foregoing twelve pages.

His

PHILIP + LEYDEN.

Mark.

Sworn at Montreal, this 18th
day April, 1817, before me,

THOMAS M'CORD, J. P.

[D.]

Affidavit of Mr. A. Johnson Williamson.

ALEXANDER JOHNSON WILLIAMSON, of the city of Montreal, in the province of Lower Canada, gentleman, maketh oath, That being in the service of the Company of Merchants, trading in the said province, and in the Indian country, under the name of the North-West Company, in the capacity of a clerk, he was at one of the trading posts of the said company, called Fort William, last summer, when the partners in the said Company from the different trading posts, and also from the city of Montreal, assembled there, as they are in the habit of doing annually, for the purpose of regulating and managing their trade. That while the deponent was at Fort William as aforesaid, about the latter end of July last, a number of persons who had been settlers and servants in the service of the Earl of Selkirk, in his Lordship's colony at Red River, within the territories of the Hudson's Bay Company, were brought to Fort William, in the canoes of the said North-West Company, the said colony, as the deponent then learnt, having been destroyed.

That after the arrival of the said persons, the occurrences which had taken place at Red River aforesaid, and in particular the attack which had been made on the colony there by an armed force, and the subsequent destruction of the said colony, and also the previous taking of the cannon belonging to the colony, were made the subjects of conversation at the dinners in the common hall, in which the partners in, and clerks of, the Company dined; and great approbation was expressed by the said partners generally, of what had been done there. The conduct which had been observed by Duncan Cameron, one of the partners in the said Company, in what related to the said occurrences, was particularly praised, and he was deemed to be very praise-worthy for the steps by which he had obtained possession of the cannon of the said colony. That from what passed in the conversations on the subject of the said occurrences at Red River, the deponent understood that the said partners then present viewed the taking the said cannon, and the attack on, and destruction of, the said colony, as measures necessary for their interest, and the greatest satisfaction was expressed by them at the success of those acts, which were spoken of as exploits. That among the persons who expressed these sentiments of approbation and satisfaction, were Simon M'Gillivray, Archibald Norman M'Leod, John M'Laughlin, Archibald M'Lellan, Alexander M'Kenzie, Kenneth M'Kenzie, John Duncan Campbell, John M'Donell, commonly called Bras Croche or Gart, Alexander M'Donell, partners in the said Company; and James Grant and James M'Tavish, clerks in the service of the said Company, and about to be admitted partners therein. That the said Duncan Cameron, who was present, and then took part in those conversations, ascribed to himself the merit of having brought about and effected the said occurrences at Red River. That while the deponent was at Fort William as aforesaid, and after the arrival of the said persons from Red River, the said persons underwent examination, before the

said Alexander M'Donell and Archibald Norman M'Leod, for the purpose of ascertaining any grievances or grounds of complaint they could allege to have had while at Red River: and the deponent assisted under the direction of the said Alexander M'Donell in taking their examinations, in the course of which great anxiety was evinced by the said M'Donell and M'Leod to discover circumstances that might bring discredit on the management of the colony, and on Captain Macdonell, governor of the said colony. That while the deponent was engaged in taking the said examinations, a letter was received by the said Alexander M'Donell from the said Simon M'Gillivray, then at the Sault St. Mary, which the said M'Donell shewed to the deponent, in which the said Simon M'Gillivray found fault with the taking up so much time in the said examinations, and suggested the expediency of getting at something that might criminate or throw blame on Lord Selkirk, observing that the said M'Donell ought to endeavour to find out some of the said settlers, who could, or would, swear to circumstances that might have that effect.

That among the said settlers who were brought to Fort William, as aforesaid, in the canoes of the North-West Company, was one George Campbell, and the deponent heard from the mouth of the said Campbell, that he had been particularly active in the attack upon, and destruction of, the said colony at Red River, and very instrumental in bringing off the colonists, having, at the instigation of the said Duncan Cameron, induced them to abandon the Settlement, and place themselves at the disposal of the said North-West Company. That the deponent, three or four days after the arrival of the said George Campbell, at Fort William as aforesaid, heard one Kenneth M'Kenzie, a partner in the said North-West Company, tell James M'Tavish, book-keeper to the Company there, that he, the said Kenneth M'Kenzie, had given one hundred pounds to the said Campbell, and afterwards the deponent saw the said George

Campbell receive a considerable sum of money in dollars from one Robert M'Robb, a clerk in the service of the said North-West Company, and employed in the payment of money on account of the said Company at Fort William, which was paid to the said Campbell by the said M'Robb, by desire of the said Kenneth M'Kenzie; and the deponent believes the sum so paid, might be about one hundred pounds. That the deponent afterwards heard from the said Campbell, that he had subsequently received other sums of money from the said North-West Company. That the said George Campbell was treated with particular attention by the partners in the said North-West Company, at Fort William, and at dinner was distinguished from the other settlers, by being placed above the clerks, and next to the partners, at table. That communications, the deponent believes, still continue to be kept up with the said Campbell, who is now in Upper Canada, by the North-West Company, the deponent having a knowledge that William M'Gillivray, one of the partners in the said Company, lately dispatched a letter to him.

That the deponent was at Fort William, when one André Herigault, charged with letters to the Governor of the Hudson's Bay territories, arrived there in a canoe, with tobacco and other articles, on his way to Red River, whither he was going in the service of the Hudson's Bay Company. That the partners in the said North-West Company at Fort William, appeared very hostile to the said Herigault, and disposed to obstruct his progress, by every means in their power, and, with this view, they enticed the guide of the said Herigault into the said fort, made him drunk, and secreted him for several days, and until after Herigault, despairing of getting him back, and unable to proceed without him, had given up the prosecution of his journey, and returned towards Montreal. That the evening before the said Herigault set out on his return, the deponent was present when the said Alexander M'Kenzie, in the presence

of a number of Indians of the half-breed, addressing himself to one of them of the name of Fraser, said, "I suppose you and some of your comrades will be going over this evening, and stealing his tobacco;" (meaning the tobacco of which the said Herigault had charge, and which was then in his canoe on the opposite side of the river). That the said Fraser immediately spoke to some of the said Indians of the half-breed, and went away with them, intending, as the deponent believed at the time, and believes still, to carry into effect the suggestion of the said M'Kenzie, as to the stealing the said tobacco. That the deponent, when they said words were used by the said Alexander M'Kenzie, understood them to import, and as being equivalent, to a direction to the said Fraser, to go and steal the said tobacco of the said Herigault, and they appeared to be so understood by every person present.

A. J. WILLIAMSON.

Sworn at Montreal, this 31st day of

December, 1815, before me,

SELKIRK,

Civil Magistrate for the Indian Territories.

[E.]

Letter from Mr. Simon M'Gillivray, to the wintering partners of the North-West Company; with their answer.

London, 9th April, 1812.

GENTLEMEN,

A circular letter addressed to you by the house of Messrs. M'Tavish, M'Gillivrays, and Co., will probably have announced to you, before you receive this, that I have recently become a partner of that establishment, and consequently have become more directly connected with the North-West Company, than I had previously been. On this occasion,

therefore, I consider it a mark of attention due from me, to address to the wintering partners some further communications, than a mere formal notice of the intimate connection thus formed between us, and though personally unknown to almost all of you, gentlemen, yet, as I flatter myself that you are informed of the share I have for several years taken in conducting some of your most interesting concerns in this country, and as I have a *family claim* to the feelings and opinions of a North-Wester, I feel myself privileged to address you on the footing of an old friend, rather than a stranger, and I shall accordingly proceed to state to you my sentiments on several matters interesting to you, which have been in discussion here during the last season.

It will not be necessary for me to enter into details respecting the negociation with the Hudson's Bay Company, as we have made ample communications upon that and other matters, to your agents, who will, doubtless, give a report of the same. The committee of the Hudson's Bay Company, is at present a mere machine in the hands of Lord Selkirk, who appears to be so much wedded to his schemes of colonization in the interior of North America, that it will require some time, and I fear cause much expense to us as well as to himself, before he is driven to abandon the project, and yet *he must be driven to abandon it*; for his success would strike at the very existence of our trade.—By the Inverness newspapers (of which I fancy some files will find their way to Fort William,) you will see that I have given his Lordship some annoyance through the medium of the press, and I have reason to hope that the "*Highlander's Letters*" will, in a great measure, prevent him from getting servants or emigrants from the Highlands of Scotland. It would, however, be very essential for this purpose, that I should be able to give the public some further details of the voyage from Stronoway last summer, and the manner in which the people from thence were disposed of after their arrival at York Factory. From the lateness of the season,

at which they arrived, I fancy they could not have made great progress into the interior, and must consequently have suffered much for want of provisions, during the winter. If you can transmit to me a narrative of their proceedings and sufferings, authenticated, if possible, by affidavits, it will answer an excellent purpose, as will also a narrative of the attacks made by the Indians on some of the Hudson Bay posts on the Red River, in the spring of last year, and of which we have only received an imperfect report; in short, any information you can collect on these subjects should be communicated to me, and I shall only make use of such part of it as may be calculated to serve our purpose.

In regard to the proposed expedition to the Columbia, I conceive it to be as much a matter of necessity for the North-West Company to follow it up, as it is to prevent Lord Selkirk from establishing colonies on the Red River. If you do not oppose the Americans beyond the mountains, they will bye and bye meet you on this side; and even if you should ultimately be inclined to make an amicable arrangement with them, the only way to do so upon an independent footing, or to obtain good terms, is to have rival establishments previously formed in the country, on the same footing as theirs;—our letter to the agents, transmitted herewith will more fully explain the views which the parties on this side of the water entertain respecting these matters, and our friend Mr. Donald M'Tavish will be able to give you every additional information that may be required.

You may probably be surprised at our slow progress in the business of the charter, but I assure you it has not proceeded from want of zeal or exertion on our part. It is impossible that you can fully understand, or that I can, within the compass of a letter, explain to you the trouble and difficulty which attends applications to Government, or public bodies in this country; and I mention the matter not with the view of assuming any merit from the exertion required on such occasions, but merely in order to account

to you for the delays which we frequently meet with, and the disappointments to which we cannot help being sometimes subjected.

I am happy to have occasion to congratulate you on the result of the Beaver Sale which is just finished, and I remain with great sincerity,

Gentlemen,

Your zealous friend,

and faithful Servant,

SIMON M'GILLIVRAY:

*To the Wintering Partners
of the North-West Company,
Fort William.*

Fort William, 17th July, 1812.

DEAR SIR,

Your favour of the 9th of April last, was handed us by the agents of the North-West Company. We entertain a due sense of the handsome manner in which you have commenced this correspondence, and expect in future that you will favour us annually with your ideas of the situation of affairs relative to the North-West Company on the other side the Atlantic, if from the urgency of your business we are deprived of the pleasure of seeing you the next summer. We are perfectly aware of the trouble you have taken since the commencement of the Earl of Selkirk's connection with the Hudson's Bay Company, to frustrate his attempts in procuring hands from the Highlands, with a view of destroying our commerce, and expect a continuation of the exertion of your abilities still to counteract his measures, and all our other invaders in time to come.

We are very sorry that it is out of our power to throw any light on the situation of these people last winter at Hudson's Bay; our remote destination precluding us from any manner of intercourse, or means of collecting a know-

ledge of the manner in which they have passed the winter. Under all circumstances, we will venture to say, that they must ultimately have suffered much distress; at any event, their provisions must have exhausted, so as to prohibit their creating us any annoyance for the present campaign. The supposed attack by the Indians, last summer, at their establishment on Red River, was by no means of such a magnitude as to merit the attention of the "*Highlander*." If any thing of importance should come to our knowledge, respecting their motions by our people, not yet arrived from the interior, you may rely on our communicating it. Your admission as a partner of the house of M'Tavish, M'Gillivray, and Co. is highly satisfactory to us, as it adds a material link to connect and strengthen the chain of relationship between us; and though some of us have not the pleasure of being personally acquainted with you, we are far from being strangers to your character and abilities. Impressed with this idea, we cannot refrain from expressing our further approbation of any measure that may ensure strength and permanency to the establishment at Montreal. The returns of this year falls even short of the last, particularly in the staple article beaver, and the cursed war puts us to a stand how to get our packs to Canada without imminent risk. Every measure is, and will be taken. Referring you for particulars to the agents,

We remain,

Dear Sir,

Your obedient Servants,

JOHN M'DONALD,

JOHN M'DONELL,

DONALD M'TAVISH,

ALEXANDER HENRY,

PIERRE ROCHBLAVE,

R. M'KENZIE,

DUNCAN CAMERON,

JOHN M'GILLIVRAY,

JAMES HUGHES,

HUGH M'GILLIS,

DAVID THOMPSON,

RONALD CAMERON.

Simon M'Gillivray, Esq.

[F.]

Examination of John M'Nab.

Western District, } THE examination of John M'Nab,
Sandwich, viz. } late of Fort William, in the said
 Western District, gentleman, who appeared before us Francis Baby, Jean Bt. Baby, George Jacobs, John Askin, Robert Innes, and William Duff, Esquires, justices of the peace in and for the Western District, taken this 30th day of June, 1817, being charged on the oath of Jasper Vandersluys, and James Chisholme M'Tavish, gentlemen, with having forcibly, violently, and by means of arms, entered a place called Fort William, in the Western District of Upper Canada, and being the principal post of a Company of Merchants, under the firm of the North-West Company, with the felonious taking, stealing, and carrying away eighty-three fusils, of the value of two hundred and fifty pounds sterling money of Great Britain, on the 14th of August, 1817, of the goods and chattels of the Honorable William M'Gillivray, Simon M'Gillivray, Archibald Norman M'Leod, and others, being the partners composing the firm of the said North-West Company.

The said John M'Nab, on his examination, now saith, that on or about the 14th of August last, the Earl of Selkirk, acting as a magistrate for the Western District, issued a warrant addressed to him and others, whereby he and others were commanded to enter Fort William, and search for a quantity of arms, said to be secreted in some part of the said fort, that a quantity of arms were found in a hay-loft in said fort, to the number of forty odd, three of which he examined were loaded, and he has reason to believe the others were also loaded; the loose guns were removed from the hay-loft to another apartment, and left there in the charge of Captain Matthey, to prevent any improper use being made of them.

That the Earl of Selkirk had been informed the night before, that the guns in question had been loaded and secreted for the purposes of being used against his Lordship and his people, that the said guns were included in the inventory of the property at Fort William aforesaid, and were left there, to be delivered to the Commissioners appointed to investigate the business between the Hudson's Bay Company and the North-West Company, and were taken possession of the 29th or 30th of May last, by the Honorable William M'Gillivray, and others, when he took possession of the fort, and all other the property therein; that some of the said guns might have been used or disposed of, after the purchase made by his Lordship, from Mr. Daniel M'Kenzie of all the property belonging to the North-West Company in said Fort William; that his papers were left at Point Meuron, about nine miles from Fort William, among which papers were the warrant in question; and that the said Honorable William M'Gillivray would not permit him to send for his papers when sent from Fort William; that Point Meuron is an establishment of the Earl of Selkirk's, and that he acted as a peace officer under the Earl of Selkirk.

JOHN M'NAUL

Taken before us at Sandwich,
on the 30th of June 1817,

ROBERT INNES,

JOHN ASKIN, J.P.

FRANCIS BABY, J.P. W.D.

GEORGE JACOB, J.P. W.D.

WILLIAM DUFF, J.P. W.D.

J. B. BABY, J.P. W.D.

A true Copy,

(Signed) JAMES ALLAN, C.P. W.D.

EXHIBIT

[G.]

*Letter from Sir John Sherbrooke to Lord Selkirk,**Castle of St. Lewis,**Quebec, 30th March, 1818.*

MY LORD,

Upon a full consideration of your Lordship's request, that I would instruct the Law Officers of the Crown, or recommend to them, to avail themselves of the assistance of your Lordship's legal advisers, in conducting certain prosecutions now pending here, for offences committed in the Indian territories, I did not feel justified in giving them any such positive instruction or recommendation, without previously leaving it to them to judge of the necessity or expediency of such a measure. But in referring this point to their own judgment and discretion, I had no hesitation in recommending to them to profit by the proffered co-operation of your Lordship's legal advisers, if they should think it would tend to facilitate the conviction of the offenders, or to promote the King's service in any respect.

I have now to acquaint your Lordship, that these gentlemen have expressed their readiness to use the assistance of your legal advisers, by receiving any information they may possess;—But that as hitherto all Crown prosecutions in Canada have been conducted by the Crown officers, and, as they are held responsible for the mode of carrying them on, they cannot allow your Lordship's legal advisers to take a part in conducting the prosecutions, or in the examination of witnesses, unless they receive my positive instructions to that effect,—which instructions, as tending to divest them of a responsibility which they acknowledge properly to belong to them, I cannot, as I have already stated, feel justified in giving to them without their desire:

I have the honour to be, MY LORD,

My Lord, (Signed)

Your Lordship's most obedient humble Servant,

J. C. SHERBROOKE.

The Right Hon. the Earl of Selkirk.

Letter from Lord Selkirk to Sir John Sherbrooke.

Quebec, March 30th, 1818.

SIR,

I have to acknowledge the honor of your Excellency's letter of this date, communicating the determination of the Law Officers of the Crown, on the subject of the proffered co-operation of my counsel, in the prosecutions now pending, for offences committed in the Indian territories.

The Attorney-General had previously stated verbally to Messrs. Stewart and Gale, who attended him as counsel for the Hudson's Bay Company, the substance of his communication to your Excellency; and these gentlemen concurred in opinion, that, unless they were to be allowed a full and free participation in the task of examining the witnesses, it would be impossible for them to render any material service to promote the ends of justice; and that a co-operation so limited, as that which the Attorney General proposes, could serve no purpose but to load them with a share of responsibility for the management of the cause, without enabling them in any effectual manner to promote its success.

It will be evident to your Excellency, that the examination of the witnesses is so essential a point, that if that be not properly conducted, nothing else can supply the defect. Whatever may be the information which a witness possesses, it will not come out to the jury, unless he be properly questioned; and to put the questions properly, (especially in a case that depends much upon circumstantial evidence,) requires an intimate knowledge of the facts of the case, as stated in the preliminary examinations of all the witnesses.

I have already pointed out to your Excellency the improbability, that in any of the cases which are likely to come forward, relative to transactions in the Indian countries, the Law Officers of the Crown should be as well acquainted

with the facts as the counsel of the private prosecutors. In the case that is now before the court, relative to the murder of Keyeney, this is particularly exemplified; for though the counsel of the Hudson's Bay Company have been in readiness both here and at Montreal, to communicate every information that might be required from them, the Attorney and Solicitor-General have been so fully occupied with other business, that it is only within these last two or three days that they found time to pay any attention to the case: and I know that within twenty-four hours of the time when the trial was to be opened, they had not seen some of the most material witnesses.—It will be a proof of very great exertion and an uncommon degree of readiness, if, with so short a preparation, these gentlemen can have qualified themselves to conduct the examination even of the witnesses for the prosecution; and I conceive it to be utterly impossible for them to be prepared to cross-examine the witnesses for the defence.—I have reason to believe that the friends of the prisoners have obtained information as to every iota of the evidence to be produced against them; so that if they should attempt, by means of suborned witnesses, to give a different colour to the transaction, they know exactly how to shape their story in the most plausible manner. This attempt might probably be defeated by an able and rigorous cross-examination; but it must be evident that without a very complete knowledge of the real facts of the case, no advocate can be prepared to detect a well-concerted perjury. Even in point of language, the Attorney and Solicitor-General are under a great disadvantage, as neither of them is very ready in the use of the French language, and they seem to be totally unacquainted with the peculiar phrases and idioms which prevail among the peasantry of this province; so that it may admit of much doubt, whether their questions will be intelligible to the witnesses.

In these circumstances, though I feel perfectly confident that there is evidence on the spot abundantly sufficient, to

establish the guilt of both the prisoners, yet, I shall not be surprised if that evidence should be so imperfectly brought out, as to fail in producing their conviction. An acquittal under such circumstances may screen them from punishment, but cannot be referred to as a proof of their innocence; or as inferring any presumption that the charges have been brought forward on light or insufficient grounds. On that point I cannot feel any great weight of responsibility, as to the case that is now under trial, as the bills of indictment found last year in the court of King's Bench at Montreal, and the Proclamation which your Excellency was pleased to issue thereupon, are more than sufficient to justify any part which I have had occasion to take in the business. But when I consider the principle which the Attorney-General has now laid down as the rule of his conduct, and look forward to the application of the same principle in other cases, I must be allowed to say, that it will be the height of injustice, if the result of these trials, conducted as they are likely to be, should be referred to as a failure on my part to substantiate the accusations that I have brought forward; and I flatter myself that your Excellency will not think it too much to represent to Lord Bathurst the impropriety of his drawing any such conclusion, or making it the ground of any determination as to the conduct to be pursued by Government.

I flatter myself also, that your Excellency may see fit to make a representation to Government of the very serious and alarming consequences which may be expected, if the principle now laid down by the Attorney-General, should be adhered to, as a permanent rule, for the conduct of the Law Officers of the Crown in this province. The Attorney-General must be sensible that a different and opposite rule is established in England,—that private prosecutors are there at full liberty to employ their own counsel to conduct prosecutions in the name of the Crown:—and I beg leave to observe that if it were not so, the Law Officers of the Crown would

be invested with a power of the most dangerous extent, no less than that of affording impunity to any offender whom they might chuse to favor, however atrocious his crimes might be. I am too well acquainted with the honourable character of Mr. Uniacke, and persuaded of the integrity of his colleague, to suppose any possibility of their being guilty of an intentional dereliction of duty. But the confidence that is reposed in the individuals who, for the time being, hold their situation, cannot, with propriety, be made the ground for a general and permanent rule as to the duties of their offices; and it is certainly a possible case, that these situations might come to be filled by persons of an opposite character, who from corrupt motives might be desirous to screen a criminal of the highest order from the punishment due to his crimes; and how is this to be prevented, if the individuals who are particularly aggrieved by these crimes, are to be excluded from any share in the management of the prosecution,—if the proceedings are to be conducted entirely by an officer, who may bring forward as little of the evidence as he sees fit, and may bring the prisoner to trial in such a manner as to screen him, in all time coming, by enabling him to plead “autrefois acquit.”

I cannot help observing, that the principle now adopted by the Attorney-General, is not consistent even with his own previous conduct, as many instances may be quoted in which he has left the examination of witnesses to the counsel of the private prosecutors; and even as lately as when he was at Montreal, three weeks ago, he distinctly gave me to understand, that on the trials of Reinhard and M^cLellan, the examination of the witnesses should be conducted by Mr. Stuart, who, in consequence of that assurance, was induced to come to Quebec,—to no purpose as it now appears, though at the expense of great inconvenience to himself and to the business of his clients at Montreal.

I conceive, therefore, that the determination which the Attorney-General announces at present, has arisen not from

the conclusions of his own mind, but from the reasonings of others; and I think it very unfortunate that he should have listened to these reasonings upon an occasion like the present, when the public are likely to be peculiarly jealous of any thing like a denial of justice. It is well known to the whole province, that a long train of atrocious crimes, of which the murder of Keveney is one example, are charged to have been committed deliberately for the purpose of promoting the pecuniary interests of a numerous and powerful association of men; among whom there are several persons who have lived on terms of intimacy with the officers of Government, and with all the individuals of the highest influence in the province, and of whom there are some who occupy distinguished stations even in the Legislative and Executive Councils of the Province. In circumstances like these, a due regard for the opinion of the public, ought surely to point out the necessity of scrupulously avoiding any proceeding which may have a tendency to create a suspicion of a desire to withhold justice, or to screen delinquents.

I have the honor to be,

Your Excellency's obedient

Humble Servant,

SELKIRK.

His Excellency Sir J. Sherbrooke,

&c. &c. &c.

[H.]

Letter from Lord Selkirk to Sir J. Sherbrooke.

Montreal, 11th March, 1818.

SIR,

Being informed that some persons, against whom bills of Indictment have been found in the Court of Oyer and Terminer, held here the week before last, are about to peti-

tion to have their trials transferred to Upper Canada,—I beg leave to lay before your Excellency some considerations which appear to me to prove, that to grant the prayer of these petitions, would be extremely prejudicial to the ends of public justice.

Of the witnesses who are to be called upon in these trials, the greatest part are unacquainted with the English language; and your Excellency is aware that the French is understood by very few in Upper Canada. In this province there is no difficulty in finding respectable jurymen, who are familiar with both languages; but at York, the testimony of the witnesses must be conveyed to the jury, through the unsatisfactory and uncertain medium of an interpreter. Under such a disadvantage, evidence of the most decisive nature may prove of no effect.

I beg leave also to observe, that the scale of society in Upper Canada does not afford the same probability as in this Province, that the verdicts will rest with men who are competent to the task of investigating an extensive and complicated train of evidence. Even the capital of that Province is hardly more than equal to an English village; and, without any disparagement to the character of its inhabitants, it would be unreasonable to expect that a town of so very limited a population, can furnish panels of jurymen equal in point of intelligence and independence to those which are to be found in places of such extent as Quebec or Montreal.

It must also be evident, that the transfer of the proceedings to a distant place, and a different jurisdiction, must inevitably occasion delay. Experience already proves, that the Act of Parliament which authorises the transfer, is wanting in several necessary details, as to the mode in which the proceedings are to be transferred; and in the attempt to carry its provisions into effect, a number of technical difficulties have been suggested, upon which the Law Officers of the Crown in the Upper Province, appear to differ in opinion

from those of Lower Canada. From this there arises a degree of embarrassment which could not have been foreseen; and whatever may be the mode ultimately adopted for removing these difficulties, it is evident that a very pernicious delay must intervene; so as not only to add to the expense of the business, already enormous, but also to keep the witnesses exposed to temptation, and to the risk of being tampered with. The great interests which are at stake on the result of these trials, the opulence of some of the parties, their well-known activity and address, and the whole tenor of their general conduct, point out the probability that nothing will be left undone that can tend to influence the witnesses and the jurymen.

There is yet another consequence of delay, which deserves the most serious consideration. The Canadian voyageurs in the interior, have long been impressed with the belief that the power and influence of the North-West Company can secure their servants from punishment, whatever may be the magnitude of their crimes; and this impression is too strong to be removed except by some striking example. With a view therefore to the peace and security of His Majesty's subjects in these countries, delay involves, in a great degree, the evils of an absolute denial of justice.

In the cases to which I allude, I am confident that no good reason can be alleged, for a transfer to Upper Canada on the ground of the residence of the witnesses. If any such allegation should be made, I trust that my counsel may have an opportunity of answering it before a determination is taken.

I flatter myself that your Excellency will not deem this an unreasonable request, or object to the propriety of my interfering as a private prosecutor. It is certainly true that all prosecutions for criminal matters must be carried on at the instance of the Crown, and that in strict law no other party is considered as interested against the prisoners; yet in practice the Law Officers of the Crown can seldom with

propriety, decline the assistance of those individuals who are most interested in the punishment of the crimes, and in most cases, the cordial co-operation of such individuals is essentially necessary, for the successful detection of guilt. In the cases now in dependence, this principle is of peculiar importance, on account of the extraordinary extent of the conspiracy, which has been brought to light, the profound artifice with which it has been carried on, the local circumstances which combined to render detection extremely difficult, and the complicated bearings of the evidence by which detection has at length been effected. The mass of evidence is so voluminous and intricate, that without a long and attentive study, it would be impossible for the most able advocate to do justice to the cause; and it cannot require much comment to point out the consequences of taking such a cause out of the hands of men who have devoted their attention to it for two or three years, and transferring it to others, to whom it is entirely new.

In addition to this, your Excellency is aware that His Majesty's Ministers hold me responsible to substantiate the accusations which I have brought forward; and also consider the result of these trials, as bearing in a most essential manner on questions in which I am directly interested. In these circumstances it must evidently be extremely unjust to withhold from my counsel that co-operation on the part of the Law Officers of the Crown, which is necessary for the success of the prosecutions.

In Upper Canada, however, it seems to be highly probable that no effectual co-operation can be obtained. The bar of that province consists of a very narrow circle; and the North-West Company have found means to retain almost every individual of any standing or eminence in the profession, not excepting the Law Officers of the Crown. At the same time, the barristers claim a right to prevent any advocate from appearing at their bar, unless they chuse to admit him into their society; and they seem disposed to

exercise that right at present, so as to exclude any of my counsel from this province. The business would thus be left entirely in the hands of the Law Officers of the Crown; and, however, much they may be disposed to do their duty, they have not hitherto had any opportunity, and cannot now have time to examine the evidence with that continued attention, which its vast extent requires.

Even in this province, my counsel have at times been refused that co-operation which justice would have required; and, on a late occasion, the authority of the Law Officers of the Crown has been used for the purpose of directly counteracting the prosecutions. A short time before my arrival here, some of the prisoners, who were in custody, in consequence of bills of indictment against them, applied to be admitted to bail. Mr. Pyke, who acted on the part of the Crown, agreed to waive the bills of indictment,—a procedure exceedingly rare in any part of the Empire, and for which I am informed no precedent can be found in this province. My counsel attempted to state some reasons against so unusual a proceeding, but was interrupted and informed that the court could not recognise any private prosecutor. But if Mr. Pyke had previously announced his intention to waive the indictments, my counsel would have been prepared to produce affidavits of such facts, as must have been decisive in preventing the measure. The culprits were notorious offenders, who had been engaged in a great variety of atrocious crimes, besides those for which they had been committed: new warrants were immediately obtained against them, but within two or three hours after their liberation, they were no longer to be found. The amount of their recognizances can be no object to their employers; and if it is thought advisable, they may easily go beyond the American lines, and find their way again into the interior, where their escape will be quoted as a confirmation of the infamous doctrine, that the North-West Company have such unbounded influence with Government

as to secure impunity for any crime which may be committed for their benefit;—an idea which is not confined to the Indian countries alone, and which derives but too much plausibility from circumstances that have occurred, even in the course of the proceedings that are now pending.

I am fully persuaded, that if the Attorney-General had been present in person at Montreal, on the occasion to which I have alluded, he would have called for the assistance of my counsel, as he has usually done on similar occasions, so as to authorise his interference. But the circumstances which actually occurred, are sufficient to shew the danger of trusting a matter of such consequence to mere courtesy or to the prevalence of a custom, which one person may observe, and another may disregard.—I trust, therefore, that it will not be imputed to any feeling of a personal nature, or in the smallest degree disrespectful to the Attorney or Solicitor-General, if I request that your Excellency will convey to the Law Officers of the Crown a general recommendation, that in all proceedings relative to the trial of the charges brought against the partners and servants of the North-West Company, they should take the assistance of my counsel, and give all due weight to their advice as to the mode of conducting the prosecution.

I have the honor to be,

Your Excellency's

Obedient, humble Servant,

SELKIRK.

His Excellency Sir J. Sherbrooke, *&c. &c.*

[I.]

Letter from Lord Selkirk to Sir J. C. Sherbrooke

Montreal, April 13th, 1818.

I beg leave to lay before your Excellency several petitions from persons against whom bills of indictment have been found at the late term of the Court of King's

Bench at Montreal, praying that their trials may be brought on at the adjourned Session of the Court of Oyer and Terminer in May, instead of laying over till the next criminal term of the Court of King's Bench in September.

Your Excellency will observe that these petitioners are, for the most part, the same persons who, in September last, were ready and anxious to take their trial, but could not obtain a hearing, because Mr. Justice Ogden, and Mr. Justice Reid, declined to sit upon any trial in which the North-West Company had an interest. Your Excellency will recollect that the persons concerned having stated the hardship of their case, and that, in the actual circumstances of the Court, they might be kept for an indefinite time under the load of accusations to which they could have no opportunity of answering,—your Excellency was pleased to issue the commission of Oyer and Terminer which opened at Montreal on the 21st of February last.

From the public notoriety of the circumstances, under which this commission was granted, and of the fact that no change had occurred in the state of the Court of King's Bench; no doubt was entertained that all matters of a criminal nature, which had arisen in the Indian territories, would be brought before the Court of Oyer and Terminer only. Yet no steps were taken in that Court for bringing on the trial of those offences of which the Court of King's Bench had declined to take cognizance, in the case of the parties upon whose petition the commission had been issued;—and, immediately after this Court had adjourned, a number of new bills of indictment were preferred in the Court of King's Bench, against the same parties, and upon matters of the very same nature, as those of which the same judges had declined to take cognizance in September last. These indictments were laid before a Grand Jury, composed in great proportion, of partners of the North-West Company, or other persons connected with them in pecuniary interests,—persons whom the Sheriff declared, in open Court, that he had placed upon the Grand Jury in the persuasion that no

matter connected with the differences between that Company and their antagonists could have come before the Court at that term.

It was by a Grand Jury so composed that these bills of indictment were found; and several of them had been thrown out but a week before in the Court of Oyer and Terminer, by a Grand Jury on which there was not a single individual who had the remotest interest in the matters before them.

It cannot be passed over that the bills of indictment preferred with so little propriety, had the signature of the Attorney-General. That officer, however, could not be ignorant of the circumstances which had led your Excellency to issue the commission of Oyer and Terminer; he must have known that by the spontaneous acts of its own Judges the Court of King's Bench had disqualified itself from taking cognizance of such cases as those in question, and that, in issuing the commission of Oyer and Terminer, the Government of the Province had acquiesced in that determination of the Judges. Neither could he be ignorant that the Grand Jury, was, in part, composed of persons who were interested in the questions to be brought forward. In these circumstances, it must be considered as highly improper, in the Law Officers of the Crown, to lend their sanction to any bills of indictment for matters of that description, to be brought before jurors who were parties, and presented to a court which had declared its own incompetency to take cognizance of them.—It appears indeed that one of those who made that declaration, (Mr. Justice Reid,) did, in the last term of the Court of King's Bench, express his intention of sitting upon some trials, in which it is well known that the North-West Company feel, at least, as much interest, as in those on which he declined to sit in September last; but are these Judges to be allowed to recal at pleasure the determinations which they have announced as the rule of their conduct, to withdraw from the bench; or to resume their seats, just as it may suit the purposes of their friends—or is the inconsistency, and

misconduct of the Judges to be taken as a precedent, and a justification for equal inconsistency and impropriety on the part of the Law Officers of the Crown?

When the circumstances, in which these bills of indictment were preferred and found, are fairly considered, I flatter myself that your Excellency will not feel much difficulty in believing that the charges are altogether vexatious, and have been brought before the Court of King's Bench, rather than that of Oyer and Terminer, only that they might remain the longer undetermined. Many of the parties are not inhabitants of the province, and, though enlarged upon bail, cannot return to their families or their proper occupations, till the trials are over; and it is for the interest of the North-West Company to prevent their resuming these occupations. A delay even till September would occasion the waste of another season; and that delay might very probably lead to still further protraction of the business. The parties are most anxious to have the matter brought to issue, so as to have an opportunity of establishing their innocence; and your Excellency must be sensible of the injustice of keeping the accusations in suspense any longer than is unavoidable.

Upon the whole I trust there can be no doubt of the propriety either of directing the Attorney-General to enter a *noli prosequi* absolutely, as to all the Indictments, which have been found in the Court of King's Bench by Grand Juries on which there were any interested persons, or, at least, of giving directions that all the bills of indictment now pending before the Court of King's Bench for matters that have arisen in the Indian territories, shall be brought to trial without delay in the Court of Oyer and Terminer.

Surmises have been thrown out of an intention, on the part of the Attorney-General, to propose a new commission of Oyer and Terminer, to supersede that already appointed at Montreal, so as to remove all these trials to Quebec.—But I trust that your Excellency will not sanction a measure so oppressive to the parties, who would thereby be subjected to the

expense and inconvenience of quitting their present residence, and of conveying themselves, and the witnesses for their defence to a distance, after having made all their arrangements for a trial at Montreal.

I understand, that, as a ground for this proposal, it is said, that party spirit is so prevalent at Montreal, and that prejudices run so strongly against the North-West Company, that an impartial trial of the cases now in dependence could not be expected. I trust, however, that your Excellency will not adopt any practical determination, upon such a fanciful allegation, advanced without the shadow of proof, and destitute of all intrinsic probability. All the prejudices that arise from feelings of interest, or from long established connection, must operate at Montreal very strongly in favour of the North-West Company, and not against them. There is, in truth, a party at Montreal that take a vehement interest in the success of the North-West Company; but there is no party against them. There is, however, a large body of independent citizens, and a respectable yeomanry in the district, so entirely unconnected in interest, either with the North-West Company, or their adversaries, that there cannot be any difficulty in finding an impartial jury; and it would be a libel on half the province to suppose that such men, when put upon oath to give a true verdict according to the evidence, would form their judgment upon any preconceived notions. This may apply equally to the cases which the North-West Company have brought forward as prosecutors, and to those in which their partners and servants are charged as culprits. As to the latter, the juries of this province appear to be in general much more apt to err from an excess of lenity, than the reverse; and nothing can be more improbable than that a jury of ordinary respectability at Montreal, should give a verdict of guilt, in a matter of life and death, without sufficient evidence.

Upon the whole, it cannot be considered as a matter of trifling importance to remove the trials in question from the

jurisdiction, where the parties and the witnesses are actually resident, especially as the recalling of the existing commission of Oyer and Terminer would, under any circumstances, wear some appearance of inconsistency and vacillation; and, when combined with the previous conduct of the Law Officers of the Crown, could not but assume the character of intentional injustice.—I feel confident, therefore, that such a proposal cannot be supported upon any sufficient grounds.

I have the honour to be,

Your Excellency's

Obedient humble Servant,

SELKIRK.

His Excellency Sir J. C. Sherbrooke,

&c. &c. &c.

FINIS

